United States Court of Appeals

for the Second Circuit

APPENDIX

75-7546

In The

United States Court of Appeals

For The Second Circuit

B

OSCAR GRUSS

Plaintiff-Appellee,

and

OSCAR GRUSS & SON,

Plaintiff,

vs.

THE CURTIS PUBLISHING COMPANY,

Defendant-Appellant.

UNITED STATES COURT OF APPEALS
FILED
NOV 24 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume I, pp. 1a – 210a

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ITED STATES DISTRICT COURT

Jury demand date:

JUDGE

No. 106 Rev. — by pltff-1/17/73

73 CIV 232

TITLE OF CASE	ATTORNEYS
R GRUSS & OSCAR GRUSS & SON VS JS PUBLISHING COMPANY	For plaintiff: KASS, GOODKIND, WECHSLER, GERSTEIN 122 EAST 42nd STREET NEW YORK, N.Y. 10017 867-8570 For defendant: DEWEY, BALLANTINE, BUSHBY, PALMER, WOOD 140 BROADWAY NEW YORK, N.Y. 10005 LEE CASH & MARKS 295 Madison Ave., N.Y.C. 10017 MU 3-6202

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	
J.S. 5 mailed X	Clerk		1/17/73	Rios, C.	15	—
			1/29/73	a/s	—	
J.S. 6 mailed √	Marshal					
Basis of Action: S.E.C. ACT-1934	Docket fee					
	Witness fees					
Action arose at:	Depositions					

et ano VS CURTIS PUBLISHING COMPANY 2a

PAGE 1

	PROCEEDINGS	Date Order Judgment No.
1-17-73	Filed complaint & issued summons.	1
1-18-73	Filed Pltffs affidavit by David M. Gerstein	2
Feb 8-73	Filed summons with marshals ret, served Cutris Publishing Co, on 1/31/73	3
Mar 21-73	Filed stip & order that the time for the deft. to answer the complaint is extended to 3/15/73. So Ordered Brieant J.	4
Mar 26-73	Filed Consent Order the undersigned atty's for deft. hereby consent to the substitution of Messer: Lee, Cash, & Marks as atty's for the Curtis Publishing Co, in this action. So Ordered Brieant J.	5
Apr3-73	Filed deft's notice of motion re: dismissal etc. ret.	6
Apr3-73	Filed deft's memorandum of law in support of motion to dismiss.	7
Apr3-73	Filed Stip and Order that the deft's motion to dismiss the complaint ret: 4-4-73 is adj'd to 4-23-73. BRIEANT,J.	8
July 12-73	Filed memorandum & order that motion to transfer is denied without prejudice to renew after discovery is complete, and the case is ready for trial. In all other respects the motion to dismiss is denied. So ordered--Brieant,J. mailed notice	9
July 12-73	Filed affdvt. of David M. Gerstein in opposition to motion to dismiss	10
July 18-73	Filed pltffs' memorandum of law in opposition to motion to dismiss.	11
	12	LC&M
Sep.5-73	Filed ANSWER to complaint.	13
Oct. 3-73	Filed pltff's request to produce	14
Oct. 24-73	Filed copy of memorandum & order filed 7-12-73.	15
Oct.31-73	Filed pltffs request for production & inspection of documents.	16
Oct.31-73	Filed pltffs that deft answer interrogs.	17
Nov.30-73	Filed pltf. notice of deposition of Margaret Wilkinson.	18
Nov. 30-73	Filed pltf. notice of deposition of Morgan, Lewis & Bockius.	19
Dec.10-73	Filed pltffs request for production of documents on 1-10-74.	20
Dec.10-73	Filed pltffs request that deft answer certain interrogs.	
Jan 15-74	Pre-trial Conference held	21
Feb-74	Filed pltffs interrogs to deft.	22
Apr.10-74	Filed affdvt in opposition to pltfs. motion to compel answers to interrogatories.	23
Apr.10-74	Filed pltfs. motion to compel answers to interrogatories.	
Apr.10-74	Filed MEMO END on pltfs. motion to compel answers to interrogatories. Motion granted in part and denied in part. So Ordered. BRIENAT,J.	
Apr.17-74	Filed pltfs. notice of entry and affdvt. of service of MEME END filed 4-10-74.	25
Jun.6-74	Filed defts answers to interrogs.	26
Jul.12-74	Filed Stip & Order that all demands for trial by jury are withdrawn.....BRIEANT,J.	27
Sep.20-74	Filed pltffs pre-trial memorandum.	
Oct-9-74	Filed deposition of Margaret Wilkinsonon behalf of pltff.dated Feb. 21, 1974	
OCT 10-74	NON-JURY TRIAL BEGUN & CONT'D.	
Oct 11 74	TRIAL CON'D & CONCLUDED (2 DAYS) JUDGE'S DECISION RESERVED.	
Dec-3-74	Filed transcript of record of proceedings, dated Oct. 10, 11 1974	
Jan 28-75	Filed Pltffs' Post Trial Memo. of Law.	
Jan 28-75	Filed Deft's Post Trial Memo.	
3-18-75	Filed Stip. of Agreed Facts.....Brieant,J.	
3-21-75	Filed Findings & Conclusions..The Parties may, if so advised, provide in the judgment which shall be settled on 5 days notice that pltffs. shall deposit the original stock certificates, in good form for transfer, with the Clerk Court, to be delivered to deft. for cancellation when the judgment is The foregoing constitutes the findings of fact and conclusions of law of pur. 52,F.R.CivP.....Brieant,J. mn	
4-10-75	Filed Judgment #75,306....Ordered that pltff. Oscar Gruss recover of the The Curtis Publishing Co. the sum of $188,400 plus interest making a total sum of $214,383.71 together with the costs of this action to be taxed; and Pltff also be granted an allowance of $1,500 for appraiser's services and pltff. Oscar Guss & Son take noting and the action as to it is dismissed on	

(for rest of Judgment entry see Page#2)

DOCKET

	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
	(Continuation of Judgment Entry on Page#1) and that the pltffs. deposit original stock certificates, representing 12,560 shares of the $4.00 Divident Series, Preferred Stock of Deft, which are registered in the name of Pltff Oscar Gruss & Son, in good form for transfer, with the Clerk of the Court, to be delivered to deft. for cancellation when this judgment is satisfied...Brieant,J. mn..... .....Judgment Entered 4-10-75...Clerk. EW ent. 4-11-75.			
11-75	Filed Deft's Order to Show Cause for an order to amend the judg. ent 4-10-75 & for an order granting a new trial.....Ordered that the pltffs be and they are stayed from executuion of or any proceedings toenforce the judg. until the entry of an order determining this motion, subject to any ext. of such stay as may be subsequently directed by this Court.....ret. 4-18-75 at 10:15AM Rm 519.... .....Brieant,J.			37
17-75	Filed Deft's Memo of Law in support of Order to Show Cause.			38
21-75	Filed Memo-End on Order to Show Cause fld. 4-17-75.....Enforcement of Judgment stayed for 10 days. Stay pending appeal granted on filing letter of credit for $150,000. Argument on motion for new trial, additional findings, etc, will be heard on 6-6-75. See transcipt of hearing this date. Settle order on nitice approving supersedeas.....Brieant,J. mn			
18-75	Rec'd from Kass, Goddkind, Wechsler & Gerstein attys for pltffs, the following Stock Certificates as indicated below.....			
	Stock Certificate No. — No. of Shares			
	NA046518 — 30			
	PA017241 — 30			
	PA7765 — 100			
	PA7295 — 100			
	PA7294 — 100			
	PA7293 — 100			
	PA7292 — 100			
	PAB2086-PAB2097(Inclusive) — 1000 shares each(an aggregate 12,000 shares)			
	total — 12,560 shares			
	and a Stock Power. Cashiers Section G. Harbison, Deputy Clerk.(entered on judg.#75,306)			
5-1-75	Filed Stip & Order that Pltffs' attys hereby waive any objections to the submission of Letter of Credit on 5-2-75 and hereby consent to the amendment of Judge Brieant's Order so to permit submission by such date...Brieant,J.			

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
5-2-75	Filed Order directing deposit of Security with the Clerk of this Cour and that the plttts. are stayed from execution of any proceedings t enforce the judgment ent 4-10-75 until the entry of an order deter the motions made by deft under Rules 52 & 59 subject to any ext. o such stay pending appeal as may be sbusequently directed by this C .....Brieant,J.			
5-2-75	Rec'd from d . as per within order $150,000 letter of Credit..Cashi Castellano,			
5-12-75	Filed Stip. & Order that in connection,with deft's motion pur to Rules 52 & 59, are postponed to 7-11-75 at 9:30AM....Brieant,J.			
5-20-75	Fi ed Deft's Affdvt.of Motion amend the Judgment.. Affdvt. by Harry L. Schroeder.			
5-20-75	Filed Deft's Memo of Law in support of its motion to amend the jud			
10-9-74	Filed Deposition of Oscar Gruss taken on 1-10-74.			
6-10-75	Filed Affdvt by pltff, in opposition to deft's motion to amend the Court's findi			
6-10-75	and for a new trial. Filed Pltffs' Memo of Law in opposition to deft's motions for an amendment of the C Findings. & Conclusions...and for a new trial.			
7--1-75	Filed Deft's Reply Memo in support of motion to amend the Findings Conclusions.			
8-25-75	Filed Memorandum and Order(Suppl. Findings) Deft's motion to amend Court's findings of fact and conclusions of law other than as af and to amend the judgment, are, in all respects, denied...Brieant			
9-22-75	Filed Deft's Notice of Appeal to U.S.C.A. 2nd Circuit from Order entered 8-25-75. .....n/m - 9-23-75 to Kass, Goodkind, wechsler & Gerstein, Esqs.			
9-26-75	Filed reply memo in support of motion to compel a			
9-18-75	Filed order directing deposit of Security and st of execution of judgment, with copy of letter Credit (originals with Cashier)			

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

OSCAR GRUSS and OSCAR GRUSS & SON,

Plaintiffs,

-against-

THE CURTIS PUBLISHING COMPANY,

Defendant.

- X

COMPLAINT

PLAINTIFFS DEMAND TRIAL BY JURY

Plaintiffs by their attorneys, Kass, Goodkind, Wechsler & Gerstein, for their complaint against defendant, allege:

1. (a) The jurisdiction of this court with respect to Count I is based upon Sections 14(a) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") as amended and Regulation 14a-9 and Item 2 of Schedule 14A of the Rules and Regulations under the Exchange Act.

(b) The jurisdiction of this court with respect to Count II and Count III is based upon diversity of citizenship and upon the principles of pendent jurisdiction. The controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000) Dollars.

2. Plaintiff Oscar Gruss is and, at all times hereinafter mentioned, was a resident of the City, County and State of New York, a general partner of plaintiff Oscar Gruss & Son and the beneficial owner of 12,560 shares of the $4 Dividend Series Prior Preferred Stock of defendant (sometimes hereinafter called the "$4 Preferred Stock").

3. Plaintiff Oscar Gruss & Son is and, at all times hereinafter mentioned, was a co-partnership, a member of the New York Stock Exchange, American Stock Exchange and the

National Association of Securities Dealers, Inc., and the registered owner of the $4 Preferred Shares. 6a

4. Defendant is, and at all times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Pennsylvania, and having its principal place of business located in the City of Philadelphia, State of Pennsylvania, qualified to do business and transacting business within the State of New York, with an office for the purpose of transacting such business within the City, County and State of New York.

COUNT I

5. On or about July 27, 1972, the following classes and amounts of securities of the defendant were issued and outstanding:

Security	Number of Shares or Dollar Amount Outstanding
6% Subordinated Debentures due 1986	$6,455,000
$4 Dividend Series Prior Preferred Stock	334,470 Shs.
$1.60 Dividend Series Prior Preferred Stock	239,118 Shs.
Common Stock, Par Value $1.00	3,555,568 Shs.

6. On or about July 27, 1972 defendant distributed a Proxy Statement and a Notice of Annual Meeting of Shareholders in connection with a shareholders meeting scheduled to be held on September 14, 1972 (the "proxy materials").

7. The proxy materials described a plan of recapitalization of the securities of defendant, whereby all of the securities of defendant would be exchanged and recapitalized into shares of Common Stock, without par value, as follows:

(a) 9.84 shares for each $100 principal amount of 6% Subordinated Income Debentures due 1986

(b) 1.54 shares for each share of the $4 Preferred Stock

(c) .93 shares for each share of $1.60 Dividend Series Prior Preferred Stock

(d) .10 shares for each share of Common Stock, par value $1.00

8. Under the terms of the proposed plan of recapitalization, as described in the proxy materials:

(a) all of the respective "preferences, qualifications, privileges and limitations" of the holders of the two classes of Prior Preferred Shares would terminate and said holders would "have the rights of holders of Common Stock, no par value";

(b) the rights of the holders of the $4 Preferred Stock to "cumulative fixed dividends at the rate of $3 per share per annum and, additionally, to earn contingent dividends at the rate of $1 per share per annum" would be cancelled; and

(c) the rights of the holders of the $4 Preferred Stock to receive "$65 per share plus all accumulated fixed dividends and all earned contingent dividends then unpaid in distribution in the event of bankruptcy, insolvency or voluntary or involuntary dissolution of the Company" would also be cancelled.

9. The proxy materials, under a heading entitled "APPRAISAL RIGHTS" also provided that "the Business Corporation Law of Pennsylvania sets forth certain rights and remedies applicable to holders of shares of Prior Preferred Stock of Curtis who may object to and desire to dissent from the cancellation of their right to receive dividends which may have accrued but which have not been declared." (Underscoring supplied)

They then set forth a brief summary of the procedure by which a shareholder could exercise his right to demand payment of and receive the fair value of his shares prefaced by the following language: "The following brief summary of such rights and remedies does not purport to be complete and is qualified in its entirety by reference to Section 810 and 515 of such law, a copy of which appears in Exhibit C hereto."

10. The proxy materials also contained as Exhibit"C" thereto, a section entitled "SECTIONS 810 AND 515 OF THE PENNSYLVANIA BUSINESS CORPORATION LAW RELATING TO RIGHTS OF HOLDERS OF PRIOR PREFERRED STOCK OF THE CURTIS PUBLISHING COMPANY DISSENTING FROM THE PROPOSED PLAN OF RECAPITALIZATION".

11. The proxy materials were false and misleading and failed to correctly indicate the statutory procedure required to be followed by dissenting shareholders, in violation of Section 14(a) of the Exchange Act and Item 2 of Regulation 14A of the Rules and Regulations thereunder, in the following manner:

(a) they omitted and failed to define the words "holders of shares" as used in said proxy materials;

(b) they omitted and failed to state that the term 'shareholder" was defined by Section 1002(18) of the Business Corporation Law of Pennsylvania as a "registered owner of shares" rather than as an actual or beneficial owner of shares if he be different from the registered owner; and

(c) they materially misstated the rights of beneficial shareholders in that Sections 1810 and 1515 of the Business Corporation Law of Pennsylvania were misnumbered and miscited as Sections "810" and "515" thereof.

12. As a result of the failure of defendant to define the words "holders of shares" and as a result of the failure of the proxy materials to define the term "shareholder", a shareholder of defendant could reasonably have been led to believe that there was no distinction made between record and beneficial shareholders for the purposes of exercising appraisal rights and that either record or beneficial shareholders could exercise such rights.

13. As a result of the misnumbering and misciting of the appropriate sections of the Pennsylvania Business Corporation Law, a shareholder of defendant could reasonably have been prevented from being able to ascertain his appraisal rights.

14. As hereinafter more fully described at paragraphs 22 and 23 hereof, which is incorporated herein as if set forth at length, in reliance on the proxy materials, plaintiffs followed the procedure set forth therein in exercising their appraisal rights.

15. As hereinafter more fully described at paragraph 24 hereof, which is incorporated herein as if set forth at length, defendant refused to permit plaintiffs to exercise said appraisal rights and refused to pay the fair value of said shares on the ground that the requirements of the Pennsylvania Business Corporation Law had not properly been followed.

16. Defendant knew or should have known that as a reasonable and foreseeable consequence of such proxy materials, plaintiffs could be misled in properly exercising their appraisal rights.

17. The foregoing course of action on the part of defendant constituted a failure by defendant to disclose certain material facts necessary for plaintiffs to exercise their

appraisal rights and constituted an act, practice and course of conduct which operated as a fraud and deceit upon plaintiffs.

18. Defendant acted, as hereinbefore alleged, by use of the mails and the means and instrumentalities of interstate commerce.

19. If plaintiffs did not properly exercise their said appraisal rights, as claimed by defendant, they were prevented from doing so by defendant's aforesaid acts and omissions.

20. By reason of the foregoing, plaintiffs have been damaged.

COUNT II

21. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 20 hereof with the same force and effect as if herein set forth at length.

22. On September 12, 1972, pursuant to the provisions of the Pennsylvania Corporation Law, plaintiffs notified defendant of their intention to vote 12,560 shares of $4 Preferred Stock, registered in the name of plaintiff Oscar Gruss & Son and beneficially owned by plaintiff Oscar Gruss, against the proposed recapitalization plan as outlined in the proxy materials. This notification was sent by letter on stationery having the letterhead of plaintiff "Oscar Gruss & Son". The letter stated that the shares were registered in the name of plaintiff Oscar Gruss & Son and that plaintiff Oscar Gruss was the beneficial owner thereof.

23. On September 21, 1972, within the time specified by statute, plaintiff Oscar Gruss & Son duly notified defendant in writing of its demand for payment of the fair value of the said 12,560 shares of $4 Preferred Stock pursuant to the requirements of the Pennsylvania Business Corporation Law and

forwarded certificates representing said shares, registered in the name of Oscar Gruss & Son, for notation of said demand, pursuant to the requirements of the Pennsylvania Business Corporation Law.

24. By letter dated September 22, 1972, plaintiffs were notified by defendant that it refused to permit the exercise of plaintiffs' rights to receive the fair value of the shares on the ground that the aforesaid letter of September 12, 1972 had not been sent by the registered holder of the shares and that, therefore, there had not been proper compliance with the provisions of Section 1515 of the Business Corporation Law.

25. Plaintiffs fully complied with all requirements of Sections 1515 and 1810 of the Pennsylvania Business Corporation Law and thus are entitled to receive the fair value of their shares pursuant thereto.

26. Defendant has violated the provisions of Section 1515 and 1810 of the Pennsylvania Business Corporation Law in refusing to pay the fair value of the said shares as demanded.

COUNT III

27. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1 through 26 hereof with the same force and effect as if herein set forth at length.

28. Section 1810 of the Pennsylvania Business Corporation Law requires that a notice of a meeting of shareholders of a Pennsylvania corporation at which a vote may be taken which would entitle shareholders thereof to exercise their appraisal rights, must contain a copy of the provisions of Sections 1810 and 1515 thereof.

29. Defendant failed to comply with such requirement and instead, falsely misstated Sections 1810 and 1515 of the Pennsylvania Business Corporation Law by misnumbering them as Sections "810" and "515" respectively, thereby misleading plaintiffs in the exercise of their appraisal rights as hereinbefore alleged.

WHEREFORE, plaintiffs demand judgment against the defendant as follows:

1. Awarding compensatory damages in favor of plaintiffs or, in the alternative, granting plaintiffs the fair value of their shares pursuant to the Business Corporation Law of the State of Pennsylvania.

2. Awarding costs and expenses and reasonable attorneys fees to plaintiffs in amounts to be fixed by the Court.

3. Awarding such other and further relief as to this court may seem just and proper.

KASS, GOODKIND, WECHSLER & GERSTEIN
122 East 42nd Street
New York, New York 10017

by _____
A Member of the Firm
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

OSCAR GRUSS and OSCAR GRUSS & SON, :

Plaintiffs, : MOTION TO DISMISS

-against- :

THE CURTIS PUBLISHING COMPANY, :

Defendant. : 73 CIV 282

- X

MOTION TO DISMISS
ON BEHALF OF DEFENDANT
THE CURTIS PUBLISHING COMPANY

Defendant The Curtis Publishing Company moves the Court to dismiss the complaint in this action as follows:

1. To dismiss Count I under Rule 12(b)(1) for lack of jurisdiction over the subject matter and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

2. To dismiss Counts II and III under Rule 12(b)(1) for lack of jurisdiction over the subject matter, under Rule 12(b)(3) for improper venue and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

3. To dismiss Counts II and III on the ground that they deal with the internal affairs of a foreign corporation or, in the alternative, to transfer this action to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1404(a).

WHEREFORE, defendant The Curtis Publishing Company prays that this Court enter an order:

(1) dismissing this action and assessing defendant's

costs, including reasonable attorney's fees, against plaintiffs and in favor of defendant; or, in the alternative,

(2) transferring this action to the United States District Court for the Eastern District of Pennsylvania.

LEE, CASH & MARKS

By_____
(A Member of the Firm)
Attorneys for The Curtis
Publishing Company
295 Madison Avenue
New York, N. Y. 10017
MU 3-6202

OF COUNSEL:

Donald A. Scott, Esq.
MORGAN, LEWIS & BOCKIUS
2107 The Fidelity Building
Philadelphia, Pa. 19109

TO: KASS, GOODKIND, WECHSLER & GERSTEIN, ESQS.
Attorneys for Plaintiffs
122 East 42nd Street
New York, N. Y. 10017

PLEASE TAKE NOTICE, that the undersigned will bring the above motion on for hearing before HON. CHARLES L. BRIEANT, JR., at Room 607L, United States Courthouse, Foley Square, City of New York, on the 4th day of April, 1973, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

LEE, CASH & MARKS

By_____
(A Member of the Firm)
Attorneys for The Curtis
Publishing Company
295 Madison Avenue
New York, N. Y. 10017

AFFIDAVIT OF DAVID M. GERSTEIN IN OPPOSITION TO MOTION TO DISMISS (Filed July 12, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

OSCAR GRUSS and
OSCAR GRUSS & SON,

Plaintiffs,

-against-

THE CURTIS PUBLISHING COMPANY,

Defendant.

AFFIDAVIT
IN OPPOSITION TO
MOTION TO DISMISS

73 Civ. 282

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DAVID M. GERSTEIN, being duly sworn, deposes and says:

1. I am an attorney and a member of Kass, Goodkind, Wechsler & Gerstein, attorneys for the plaintiffs. I make this Affidavit in opposition to defendant's motion to dismiss the Complaint or, in the alternative, to transfer the action to the United States District Court for the Eastern District of Pennsylvania.

2. Since this motion is primarily a motion to dismiss for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction, most of the issues turn upon what is stated in the Complaint and not upon extrinsic evidence provided by way of affidavit. Therefore, the purpose of this Affidavit is limited to the provision of facts showing (1) that this forum is the most appropriate one for this action and (2) the details of the general allegation in the Complaint that

the defendant refused to permit the exercise of plaintiffs' rights to receive the fair value of the shares referred to therein. The Court is respectfully referred to the Complaint and to plaintiffs' Memorandum of Law for the resolution of the remaining issues.

A copy of the Complaint is annexed hereto as Exhibit "A".

3. I have been legal counsel to plaintiff Oscar Gruss & Son for over five years and have personal knowledge of much of their affairs. I conducted a personal investigation of the matters pertaining to this action and am thoroughly familiar therewith.

4. Based upon my aforementioned knowledge of the affairs of Oscar Gruss & Son and investigation, I know the following facts which show that this forum is appropriate:

(a) Plaintiff Oscar Gruss & Son has its place of business in New York City and is a member of the New York Stock Exchange and American Stock Exchange, both located in New York City.

(b) Plaintiff Oscar Gruss resides in New York City and is a general partner of and actually engaged in business with plaintiff Oscar Gruss & Son in New York City.

(c) The defendant is a corporation which is qualified to do business in New York State, has an office in New York City and transacts business in New York City.

(d) The plaintiffs have advised me that their letter to the defendant objecting to the proposed recapitalization merger referred to in Paragraph 22 of the Complaint, was mailed from New York City.

(e) The certificate for the 12,560 shares of Preferred Stock issued by the defendant and referred to in the Complaint were kept in New York City, in my office, and mailed by me to the defendant, as alleged in the Complaint, from New York City.

5. Based upon my aforementioned knowledge of the affairs of Oscar Gruss & Son and investigation, I know the following facts pertaining to the defendant's refusal to permit the plaintiff to exercise appraisal rights:

(a) The letter to the plaintiffs, referred to in Paragraph 24 of the Complaint, notifying them that defendant refused to permit them to exercise their appraisal rights, was actually received and was so received by me as their attorney.

(b) Neither of the plaintiffs received written notice that said recapitalization became effective although the defendant was required to provide such notice by §810 D of the Pennsylvania Business Corporation Law.

(c) Neither of the plaintiffs received a written offer from the defendant to pay for the shares although the defendant was required to make such an offer by said §810 D.

(d) Neither of the plaintiffs received the defendant's financial statements which were

required to have been sent with such written offer by said §810 D.

WHEREFORE, the plaintiffs request that this Court deny, in all respects, the defendant's motion.

David M. Gerstein

Sworn to before me, this
7th day of May, 1973.

Michael P. Fuchs
Notary Public

MICHAEL P. FUCHS
Notary Public, State of [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1975

EXHIBIT A - COMPLAINT ANNEXED TO FOREGOING AFFIDAVIT

(Printed herein at p. 5a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x Index No. 73 Civ.282

OSCAR GRUSS and OSCAR GRUSS & SON,

Plaintiff,

-against- ANSWER

THE CURTIS PUBLISHING COMPANY,

Defendant.

----------x

Defendant, by its attorneys LEE, CASH & MARKS, answering the complaint herein:

1. Admits the allegations contained in paragraphs "1 (a)" and "1 (b)", except deny knowledge or information sufficient to form a belief as to the truth of the allegation that the controversy exceeds, exclusive of interests and costs, the sum of $10,000.00.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "2" and "3" of the complaint.

3. With respect to paragraphs "7", "8", "9" and "10" of the complaint, refers to the material therein described for the terms and provisions thereof.

4. Denies each and every allegation set forth in paragraph "11" of the complaint, and notes that plaintiffs have abandoned the allegations set forth in paragraph "11 (c)".

5. Denies each and every allegation set forth in paragraphs "12", "16", "17", "19", "20", "23", "25" and "26" of the complaint.

6. Denies each and every allegation set forth in paragraph "13" of the complaint, and notes that such allegations

have been abandoned by plaintiffs.

7. Denies each and every allegation set forth in paragraph "14" of the complaint and incorporates by reference the answers to paragraphs "22" and "23" of the complaint as elsewhere set forth inthis answer.

8. Denies each and every allegation set forth in paragraph "15" of the complaint, except admits said allegations with respect to plaintiff, OSCAR GRUSS & SON.

9. Answers the allegations referred to in paragraph "21" of the complaint as elsewhere answered herein.

10. Denies each and every allegation set forth in paragraph "22" of the complaint, except admits that defendant received a letter of September 12th, 1972 and refers to the letter itself for the contents thereof.

11. Denies each and every allegation set forth in paragraph "24" of the complaint, except admits such allegations with respect to plaintiff, OSCAR GRUSS & SON.

12. With respect to paragraphs "27", "28" and "29" of the complaint, notes that said allegations have been abandoned by plaintiffs.

AS AND FOR AN AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

13. Plaintiff, OSCAR GRUSS & SON voted in favor of the plan of recapitalization referred to in the complaint, thereby waiving its rights as a dissenting shareholder under Sections 810 and 515 of the Pennsylvania Business Corporation Law.

WHEREFORE, defendant demands judgment dismissing the

complaint herein together with the costs and disbursements of this action.

LEE, CASH & MARKS

By: _____

Theodore L. Marks
A Member of the Firm
Attorneys for Defendant
Office & P.O. Address
295 Madison Avenue
New York, New York 10017
(212) MU-3-6202

COPY OF MEMORANDUM AND ORDER DENYING MOTION TO DISMISS
(Filed October 24, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

OSCAR GRUSS and OSCAR GRUSS & SON,

Plaintiffs,

-against-

THE CURTIS PUBLISHING COMPANY,

Defendant.

- -X

73 Civ. 282

MEMORANDUM AND ORDER

Brieant, J.

The first cause of action pleads, conditionally, that plaintiff shareholders "could" have been misled, [but cf. ¶19] as a result of ambiguous and unclear proxy materials, which failed to define "shareholder" as used therein, and advise that it meant only the "registered owner of shares" or "shareholder of record", to the exclusion of the "beneficial owner". Plaintiffs base this claim on Sections 14(a) and 27 of the Securities Exchange Act of 1934, and the rules thereunder, particularly Rule 14(a) (17 C.F.R. 240.14a-101). As to such a claim, our jurisdiction is exclusive and plenary. 15 U.S.C. §78aa.

Proxy solicitation materials gave incomplete information as to dissenting shareholders' rights to appraisal and payment

upon a proposed corporate reorganization. Such rights must, it is alleged, be asserted by a shareholder of record, rather than by an equitable owner.

Here, the record owner was "Oscar Gruss & Son", a co-partnership, and the exercise of rights was apparently effected by Mr. Oscar Gruss, the beneficial owner.

Implicit is the suggestion that the beneficial owner received a Notice of Shareholders Meeting and proxy material directed to shareholders of record, and not realizing the full import of the technical distinction, exercised the right to object in the former capacity. There appears to be a close relationship between the two ownerships, and we are told without contradiction that Mr. Oscar Gruss, the beneficial owner, is a general partner of Oscar Gruss & Son, the holder of record.

The case thus presents an example of a typical "trap for the unwary". Relying, we are told, on the proxy statement, Gruss wrote, over his signature on the letterhead of Oscar Gruss & Son, setting forth the fact of registration of the shares in Gruss & Son and that he was the beneficial owner of the shares. Defendant refused to recognize his [timely] assertion of the

right of appraisal claiming that the objection had not been sent by the holder of record, and was therefore not in compliance with the applicable provisions of the Pennsylvania Corporation Law.

The second cause of action alleges due compliance by plaintiffs with the Pennsylvania statute which entitles them, as dissenters who assert their statutory rights, to have their shares appraised and paid in cash. Such inconsistency between the two claims is permissable. We read the second cause of action, as pleaded, to seek a declaration of rights, rather than a request for a Court supervised appraisal. Defendant has not made the offer required by the statute, and takes the position it is not required to. Plaintiff is not yet "Unable to agree ... on the fair value of the shares", within the meaning of §515 F of the Pennsylvania BCL. What will happen if that point is reached is not before us. The allegations present a justiciable controversy. Sub-paragraph 11(c), repeated in ¶29 insofar as it relates to alleged misnumbering of references to the Pennsylvania statute was abandoned on the argument of the motion.

Defendants assert that the first cause of action fails to state a claim, and that exclusive jurisdiction of the second cause of action is in the state court, because the Pennsylvania statute which creates the right, by §515 F thereof, designates such court, and provides that its jurisdiction shall be plenary and exclusive. The third cause of action pleaded depends on whether the first be sustained, and requires no analysis at this time.

Pendent jurisdiction exists, with respect to the second cause of action. As stated in Knighton v. Johnston County, 330 F.Supp. 652, 654 (1971):

> "[i]t is axiomatic that whenever there is a substantive right enforceable in a judicial proceeding in any court of a state, it is also enforceable in the courts of the United States, and this must be accomplished without regard to any limitation imposed by state legislatures."

To the same effect are Markham v. City of Newport News, 292 F.2d 711 (4th Cir. 1961); Griffith v. Bank of New York, 147 F.2d 899, 904 (2d Cir. 1945), cert. denied 325 U.S. 874, and cases therein cited.

Nor does the complaint require our adjudication of internal affairs of a foreign corporation. All that need be

adjudicated under the second claim is whether or not plaintiffs have made a valid election to dissent under the statute.

The first cause of action, read favorably to the pleader, as it must be here, correctly advises defendant of plaintiffs' claims that they relied upon the explicit provisions of the proxy statement and were misled to their financial detriment, because the statement did not advise, with sufficient clarity, "... any statutory procedure required to be followed by dissenting security holders in order to perfect [their] rights", (17 C.F.R. §240.14a-101, Item 2).

The resulting damage was directly caused by breach of a statutory duty, and the way in which it resulted was foreseeable. All holders, beneficial and of record, are members of the class intended to be protected by the statute and proxy rules. A private right of action is therefore implied. J.I. Case Co. v. Borak, 377 U.S. 426 (1964); Colonial Realty Corp. v. Bache, 358 F.2d 178 (2d Cir. 1966, cert. denied 385 U.S. 817.

That branch of the motion which seeks to transfer the action to the U. S. District Court for the Eastern District of Pennsylvania is denied, without prejudice to renew after discovery

is complete, and the case is ready for trial. At that time it may well appear that the convenience of witnesses and parties will require such transfer. If the application to transfer is renewed, the Court should be informed as to what other litigation, if any, is then pending in other forums involving the same factual issues. Venue in this district is proper.

In all other respects the motion to dismiss is denied.

So Ordered.

Dated: New York, New York
July 11, 1973

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

STIPULATION OF AGREED FACTS (Filed March 18, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

OSCAR GRUSS and OSCAR GRUSS & SON, :

Plaintiffs, :

-against- :

THE CURTIS PUBLISHING COMPANY, :

Defendant. :

----------X

73 Civ. 282 CLB

STIPULATION OF AGREED FACTS

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for the parties herein, that the following facts are true and need not be proven at trial:

1. The defendant is a Pennsylvania corporation with its principal place of business in Indiana.

2. Plaintiff Oscar Gruss & Son ("Gruss & Son") has been the record holder of at least 12,560 shares of $4.00 dividend series preferred stock issued by defendant from prior to July 27, 1972 to the present date subject to the effect of the recapitalization described in the prospectus referred to in paragraph 3 hereinbelow.

3. Annexed hereto as Exhibit "A" is a prospectus dated September 14, 1972, a copy of which was distributed to all record shareholders of the defendant, including Gruss & Son, on or about July 27, 1972.

4. Margaret Wilkinson, then a vice-president and a secretary of defendant, received a letter dated September 12,

1972, a true copy of which letter is annexed hereto as Exhibit "B".

5. The defendant has not granted appraisal rights, if any, which arose by reason of said recapitalization, with respect to the aforementioned 12,560 shares of stock.

6. Annexed hereto as Exhibit "C" is a true copy of the 1973 annual report issued by the defendant.

7. The defendant represents that Annexed hereto as Exhibit "D" is a true copy of the report by Derry, Michener & Booth referred to on page 2 of said 1973 annual report, which was prepared and delivered to the defendant upon the defendant's request.

Dated: September 10, 1974

KASS, GOODKIND, WECHSLER & GERSTEIN

By: Michael B. Fuchs
A Member of the Firm
Attorneys for Plaintiffs

LEE, CASH & MARKS

By: [illegible]
A Member of the Firm
Attorneys for Defendant

SO ORDERED:

U.S.D.J.

EXHIBITS ANNEXED TO FOREGOING STIPULATION

EXHIBIT A - PROSPECTUS DATED SEPTEMBER 14, 1972

(Printed herein at p. 317a)

EXHIBIT B - LETTER DATED SEPTEMBER 12, 1972

OSCAR GRUSS & SON
MEMBERS NEW YORK STOCK EXCHANGE
80 PINE STREET, NEW YORK, N. Y. 10005

September 12, 1972

Mr. Beurt R. SerVaas, Chair of the Board
The Curtis Publishing Company
1701 The Fidelity Building
Philadelphia, Pennsylvania 19109

Dear Mr. SerVaas:

Enclosed please find my proxy for 12,560 shares of Curtis Publishing $4.00 Dividend Series Prior Preferred Stock series registered in the name of Oscar Gruss & Son, of which I am beneficial owner.

As you will note I am voting against proposal No. 3 (three) proposing the adoption of the plan of reorganization outlined in the proxy material dated July 27, 1972 which was sent to me.

In addition, pursuant to Sections 810 and 515, of the Business Corporation Law of Pennsylvania, I hereby object to this proposal since it makes inadequate provision for the rights and preferences of my preferred stock.

It it my intention to demand payment of the fair value of my shares within 20 days after the meeting date if it is approved by shareholders.

Very truly yours,

Oscar Gruss

OG:pm
Enc.

Exhibit "B"

EXHIBIT C - 1973 ANNUAL REPORT

(Printed herein at p. 401a)

TRANSCRIPT OF PROCEEDINGS BEFORE BRIEANT, D.J. ON OCTOBER 10 and 11, 1974 (TRIAL)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR GRUSS & OSCAR GRUSS & SON, Plaintiffs	Before: HON. CHARLES L. BRIEANT, JR., District Judge
vs.	
THE CURTIS PUBLISHING CO., Defendant.	73 CIVIL 282

New York, October 10,11, 1974

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

Oscar Gruss and Oscar Gruss & Son, :

Plaintiffs, :

-against- : 73 Civ. 282

The Curtis Publishing Company, :

Defendant. :

----------x

Before:

Hon. Charles L. Brieant, Jr.,

District Judge

New York, N. Y.
October 10, 1974 - 10:15 a.m.

APPEARANCES:

Kass, Goodkind, Wechsler & Gerstein
122 East 42nd Street
New York, New York 10017
Attorneys for the Plaintiffs
BY: MICHAEL P. FUCHS, Esq.

Lee, Cash & Marks
295 Madison Avenue
New York, New York 10017
Attorneys for Defendant
BY: MARK CASH, Esq.

THE COURT: All right. Are you all ready?

MR. FUCHS: Yes, your Honor.

MR. CASH: Your Honor, may I make a request of the Court before we commence the trial as to procedure and some direction from you so that I can make some effort to cut some costs involved in this.

I have been advised by plaintiff that they are using a member of the firm of Gruss & Son, the Gruss & Son firm, to act as a witness. Curtis, on the other hand, is using a witness who, as you can well imagine the expense, is quite high.

As you most likely remember, that lawsuit has two --

THE COURT: What is your application?

MR. CASH: My application is, your Honor, to know when I must bring in my expert.

THE COURT: I am just about to settle that. I was just this moment preparing to ask Mr. Fuchs how long he would take and what he had in mind this morning.

MR. FUCHS: Your Honor, first of all, I think that, if you will give us your indulgence, yesterday and the day before, the other counsel and myself were working very hard to come up with more stipulations of fact pertaining to that, and I think if we can read them into the record, it will clear

away many issues, except basically just the issue of valuation. I think there will be a few other issues besides that but, basically, that is it.

THE COURT: I will give you a short recess in a moment, but I want to get back to Mr. Cash's inquiry about the scheduling, because he wants to tell his expert to get on the shuttle plane.

MR. FUCHS: So what I plan to do, your Honor, is this: First of all, in accordance with the stipulations, we have a portion of a deposition to be read into the record.

THE COURT: That you won't have to read. You can mark that in evidence as an exhibit, and the Court will definitely read it.

MR. FUCHS: Right.

Then, the next thing I would do is call Mr. Gruss up to the stand for very short testimony pertaining to one particular area, which will be a few questions; cross examination on that, I can't control, of course.

Then, I would have Mr. Anreder come to the stand, who will cover a few questions on the areas other than as the expert witness in valuation. I would then go into his area as an expert witness.

Now, the longest part of my testimony would be

Mr. Anreder's testimony with regard to the valuation of the shares.

I would guess that maybe we would have a total of maybe two-and-a-half, three hours of testimony, excluding cross and excluding any rebuttal that may be necessary.

THE COURT: Then, it would almost look as if ten-thirty in the morning he could have his man.

MR. FUCHS: Tomorrow morning, I would imagine so.

THE COURT: Is there any objection to taking the man out of order? How far is he coming from?

MR. CASH: He is going to be in this area. He has travelled to Ohio, but is coming back today and should be back in New York now. I just don't want him sitting in court, your Honor, while --

THE COURT: It looks to me that you should have him here ten-thirty tomorrow morning.

MR. CASH: Yes, I can. But, there is a question of law, your Honor, that I am so much confused about, and to make life a little more efficient: As you may remember, a motion was originally made a couple of years ago to dismiss, and in that motion you mentioned the fact that you kept jurisdiction over this case on the question of law as to whether there had been proper execution of the proxy and of the appraisal rights in Pennsylvania. And you left open the

question as to whether, if you did find in fact that there had been proper execution, then the 10b action would, as a matter of course, fall.

Then the next question that comes up is whether this case will then have to go back to Pennsylvania on the question of valuation. Because you mentioned in your order, you said, "Nor does the complaint require our adjudication of the internal affairs of the corporation. All that needs to be adjudicated under the second claim is whether or not the plaintiffs have made a valid election to dissent under the statute."

This puts me in somewhat of an awkward position, your Honor, because if you do happen to find against me on that claim, then we have this question of law as to whether it should go back to Pennsylvania. And I see no reason to have an expert --

THE COURT: You see, the Court would have pendent jurisdiction, which is a matter of discretion the Court could exercise even on the internal affairs of the corporation, if need be. That is not jurisdictional; that is discretionary.

But the problem goes beyond that. I remember that opinion, in fact I have it here on the desk, of July 11, 1973. But my memory, on the several occasions that you gentlemen have been here for informal pre-trial discussions with me, has

always been that there was going to be one trial and that the experts would testify, and I would take that proof.

Now, if I sustain your legal defenses, obviously the valuation testimony isn't going to receive any consideration. But I would certainly like to take a full record.

MR. CASH: That is my problem. I respectfully disagree with you. I felt from the tone of your decision and my feeling about the law that you had decided that you had the right to -- this Court had jurisdiction to determine whether there had been proper execution in Pennsylvania.

And the question was always left open and is still left open in my mind -- I feel biased -- that if you do find that there had been proper execution, then that matter must go to Pennsylvania on the question of procedure to go through the appraisal, because that is strictly a limited area under the appraisal sections of the Pennsylvania statute.

If you happen to find that there had been no execution under 10b, then I think it is true it is in your jurisdiction to determine damages.

THE COURT: If there is no execution under the 10b, as you express it -- I am adopting your language for the purpose -- he can't prove his damages without proving something with respect to the valuation.

MR. CASH: That is true.

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THE COURT: Because he can go today and get that Class B stock or whatever it was they were going to give him in the exchange. Was it debentures?

MR. CASH: No, it was going to be common stock, $4 preferred being converted to common.

THE COURT: He can get that this afternoon, isn't that right?

MR. CASH: Yes, he can convert it.

THE COURT: All he has to do is discontinue his action and you will give him the stock.

MR. CASH: That is correct.

THE COURT: So that if he has any claim at all here, you can't reach the question of damages without proving the valuation. And if he comes forward with evidence, you will have to meet it. You don't even have a 10b claim unless you have damages.

MR. CASH: You don't have a 10b claim unless I lose on the second cause of action, too. Because if you find that he effectively carried through with the Pennsylvania statute, then there cannot be a 10b.

THE COURT: My disposition in the matter is to take the full proof, including the proof of the experts on the valuation. We will give the Court of Appeals a full record.

MR. CASH: May I clarify the question on the experts. I did not understand something. Are you therefore directing the plaintiff to start putting in his testimony with regard to damages or value tomorrow morning, so that my expert can be there to listen to him?

THE COURT: No. Absolutely not. You knew this was a trial date, and if he wanted to listen to it, he should be here or order the transcript. He is starting his trial, he is getting through his plaintiffs' case as fast as he can.

MR. CASH: Your Honor, I don't deny that. Could I at least have until this afternoon -- in other words, could the trial be structured so that the plaintiff is required to put in his questions this morning, and we can start this afternoon on the question of damages, so that I don't have to have my witness then sitting here all morning, at least until two o'clock? I am merely trying to cut --

THE COURT: Why don't you gentlemen confer, as professional men should, with each other and reach an accomodation on that score. I am taking a brief recess at this point. I don't want to make a direction on that. You talk with each other.

(Recess.)

MR. FUCHS: Your Honor, I think we have resolved

the question that Mr. Cash had posed. I believe that we could probably finish up with the plaintiffs' case, other than the expert witness pertaining to valuation, that is, before lunch break. We would break off the witness's testimony prior to the time that he started testifying as an expert. Mr. Cash would be able to call his expert during the lunch recess, and I will proceed with the expert after lunch.

THE COURT: All right. I will probably have to recess around twenty after twelve. I probably will not resume with you until two-thirty, because I have some other matters scheduled. I will give you those times so that you can guide yourselves.

MR. FUCHS: If we finish before then, we would accomodate Mr. Cash, if it is all right with you.

THE COURT: Certainly. If you finish ahead of time, we will recess for a longer luncheon hour.

MR. CASH: Thank you, your Honor, very much.

THE CCURT: I understand that there are some additional facts of a stipulated nature.

MR. FUCHS: Right, your Honor. It is herein stipulated and agreed by and between the parties herein that if plaintiff, Oscar Gruss, would testify, he would testify that he has been a general partner of plaintiff, Oscar Gruss & Son, and has been the beneficial owner of the 12,560

shares of $4.00 series preferred stock referred to in paragraph 2 of the stipulation of agreed facts, dated September 10th, 1974, hereinafter called the prior stipulation.

At all times, Gruss & Son was the record holder of such shares.

THE COURT: Oscar Gruss & Son?

MR. FUCHS: Right. In other words, we have already stipulated that Oscar Gruss & Son was the record holder of the shares. Now we are stipulating that Mr. Gruss would testify that he is the beneficial owner of the shares.

THE COURT: All right.

MR. FUCHS: Two. The plaintiff, Oscar Gruss, would testify that Gruss & Son is a member of the New York Stock Exchange, has its only place of business in New York City, and that Mr. Gruss and all the other partners of Gruss & Son reside in and are domiciled in New York State.

THE COURT: Mr. Gruss is a general partner of Gruss & Son?

MR. FUCHS: That is correct. In the first paragraph, we said that he was a general partner.

Three. The original of the letter, a copy of which is annexed as Exhibit B to the prior stipulation, that is, the September 12, 1972 letter, and the original of the envelope in which said letter was contained, may be intro-

duced into evidence without providing a foundation therefor, and said envelope is the envelope in which said September 12, 1972 letter was received.

Your Honor, to make that a little clearer, if we may at this point, I think we can stipulate and agree that we can introduce as Plaintiffs' Exhibit 1 in evidence the original of the September 12, 1972 letter, that is, a copy of which is annexed as Exhibit A to the prior stipulation.

We will also introduce as part of that exhibit the envelope in which that letter was contained, and we are agreed that that envelope is the envelope in which it was contained.

If I may hand this up, and have it marked as Plaintiffs' Exhibit 1.

THE COURT: No objection?

MR. CASH: No objection, your Honor.

THE COURT: Received in evidence.

XXX (Plaintiffs' Exhibit 1 received in evidence.)

THE COURT: You may continue.

MR. FUCHS: It is further stipulated that a proxy card dated August 22, 1972, with a stamp thereon stating "Oscar Gruss & Son, 80 Pine Street, New York, New York," was and still is found in the books, records and files of

cpd - 11A

defendant and their agent with respect to the election dealing with the recapitalization referred to in the prior stipulation, hereinafter called the recapitalization, kept in the ordinary course of their business, and was obtained by Curtis in August of 1972, and was utilized by the judge of election as a positive vote for the recapitalization.

No negative proxy card from Gruss & Son, if any, was included by the judge of election in his tally.

Your Honor, at this time, we have also agreed to introduce into evidence as Defendant's Exhibit 1 the card that I was just referring to in this stipulation. This is the original of this card. I will not object to the introduction of it into evidence, except that the parties reserve all rights with respect to any issues as to the effect of and the authorization for this particular proxy.

THE COURT: Is it being offered as a defendant's exhibit?

MR. CASH: Yes, it is being offered as a defendant's exhibit.

THE COURT: All right. Hand it to the clerk.

XXX (Defendant's Exhibit A received in evidence.)

MR. FUCHS: Oscar Gruss and Mr. Julius Anreder, who will be testifying later today, or later in this trial,

would testify that a proxy card, marked so as to vote against the recapitalization, dated September 12, 1972, was executed, and Gruss directed Julius Anreder to see to it that same was enclosed in the envelope, which was previously introduced as part of Plaintiffs' Exhibit 1, that it was enclosed in that envelope with the September 12, 1972 letter that was previously introduced into evidence, and was mailed to the addressee of said letter.

THE COURT: What was the day of the week of September 12?

MR. FUCHS: I am sorry, what was that, your Honor?

THE COURT: What was the day of the week of September 12, 1972? You can come back to that, but I would like to know.

MR. FUCHS: I don't know offhand, your Honor. I can check that.

THE COURT: All right.

MR. FUCHS: Your Honor, just to clarify this, in a prior stipulation we have already stipulated that Margaret Wilkinson, the secretary of the company, received that letter, at least that letter, and we will later on in this stipulation stipulate that she received it on September 13, 1972. I am clarifying that now, since it seemed to be a question in your mind.

Oscar Gruss and Julius Anreder would testify that a proxy card marked so as to --

THE COURT: I believe you put that in already.

MR. FUCHS: Going to the next one: Oscar Gruss would testify that the handwriting on the September 12, 1972 letter was placed thereon by him, was and is the way he writes "Oscar Gruss & Son," and was intended by him to state "Oscar Gruss & Son."

THE COURT: This is on Exhibit 1?

MR. FUCHS: That is correct, your Honor.

MR. CASH: It is on the letter, your Honor.

MR. FUCHS: Right, on the letter.

He would also testify that he also placed a signature on the proxy that was enclosed with that letter for the purpose of executing that proxy, and he did so in the same form as the handwritten signature on the September 12, 1972 letter, and that such signature on the proxy was and is the way he writes "Oscar Gruss & Son," and was intended by him to state "Oscar Gruss & Son."

Julius Anreder would testify that, pursuant to Mr. Gruss's directions, he personally enclosed said proxy, voting against the recapitalization, in said envelope, which was part of the Plaintiffs' Exhibit 1, with the September 12, 1972 letter, which is part of the Plaintiffs' Exhibit 1;

sealed the envelope, and gave same to the mailing department of Gruss & Son, with directions for it to be mailed to the addressee.

Said envelope, containing at least the September 12, 1972 letter, was received by Margaret Wilkinson on September 13, 1972. In a prior stipulation, we stipulated that she was then the secretary and vice president of Curtis.

Oscar Gruss and Julius Anreder would testify that, upon directions from Mr. Gruss to prepare whatever documents were necessary to obtain rights of appraisal by reason of the recapitalization, Julius Anreder prepared this September 12, 1972 letter and filled out the proxy card voting against the recapitalization and delivered them, on September 12, 1972, to Oscar Gruss for execution.

Oscar Gruss did not personally read the portion of the prospectus, a copy of which is annexed to the prior stipulation, pertaining to the manner of exercising rights of appraisal, but relied upon Julius Anreder to properly interpret such portion and thereby provide him with appropriate documents for exercising such rights.

THE COURT: Mr. Anreder is an employee of Oscar Gruss & Son?

MR. FUCHS: That is correct.

He will testify, during this trial, who he is, etc.

and it will be out before the trial is over.

The plaintiffs may introduce in evidence, with the same force and effect as though the witness were over one hundred miles from the place of the trial, line 4, page 23, through line 8, page 24; and line 4, page 28, through line 19, page 28, of the deposition of Margaret Wilkinson, held on February 21, 1974, but all of the above portions must be read in if any are; and Exhibit 1, referred to on page 23 of that deposition, is the September 12, 1972 letter, which is Plaintiffs' Exhibit 1 herein.

The parties reserve their specific rights with regard to reading any other portions of the deposition into the record.

If I may, your Honor, the question is this: That this witness's deposition was taken in Philadelphia, which is sort of on the borderline of being one hundred miles, or not --

THE COURT: That creates no problem. My suggestion is you mark it for identification and outline perhaps in red, or however you find convenient, those lines that are received in evidence. Then you won't have to read it into the record and the Court will read it.

MR. FUCHS: All right. I believe, your Honor, that the original is filed in Court. Would you want me to so

mark it on the original or on my copy and leave it with you?

THE COURT: I am somewhat doubtful as to the original, Mr. Fuchs.

MR. FUCHS: That it is there?

THE COURT: It doesn't seem to be there.

MR. FUCHS: It must be downstairs because I know my clerk filed it the other day.

THE COURT: Maybe you filed it since you scheduled the trial date.

MR. FUCHS: It could have been, your Honor.

THE COURT: Then I wouldn't have it. We will look for it during the luncheon recess.

MR. FUCHS: Then, your Honor, I will mark it if you find the original, and may we deem that that portion that I will mark, that we have stipulated to, is introduced into evidence?

THE COURT: Yes.

MR. FUCHS: May I make one other suggestion. The portions are relatively short, and I think --

THE COURT: You would rather read them?

MR. FUCHS: May I read them?

THE COURT: All right. If they are really short.

MR. FUCHS: All right. Let me just finish this stipulation, then I will read it in as part of the evidence.

The stipulations herein that certain matters would be testified to have the same force and effect as though testimony were actually given at the trial, as set forth therein.

The defendant will not rebut or cross examine on any of the specific matters which it is herein stipulated would be testified to. Julius Anreder may be asked to confirm such matters at the trial with leading questions from plaintiffs' counsel if necessary for the elicitation of his further testimony relating thereto, and defendant will not cross examine on such confirmation but reserves its right to cross examine on such further testimony.

Your Honor, to take care of preliminary matters, Mr. Anreder may have to build upon those preliminary matters with further testimony and just to get it over with, I will just read him a leading question to confirm it, and we will proceed.

The matters set forth and agreed to in this stipulation are in addition to and not in place of the matters set forth in the prior stipulation.

One last stipulation, and that is this, your Honor: With regard to the expert witnesses, they will be testifying with regard to market values of the securities, the various securities of Curtis. We will stipulate that we would permit

into evidence anything that they might say is the market value or was the market value at any time of such securities without requiring a foundation therefor. Of course, what weight you would give --

MR. CASH: Your Honor, I would like that clarified a little more. I agree to stipulate that both expert witnesses can testify as to what they determine from the various exchanges as facts of both volume and price on the particular date without requiring the necessary foundation be placed by bringing in members of the various exchanges.

But I have not agreed that the statement made by the individual expert will be what the value is that day. It is merely relating without the necessity of a foundation.

MR. FUCHS: I agree to the stipulation as modified by Mr. Cash.

THE COURT: All right.

MR. FUCHS: Your Honor, that is the extent of the stipulations.

THE COURT: Mr. Cash, do you agree with the stipulations as read?

MR. CASH: I agree, your Honor.

THE COURT: All right. You gentlemen have been very helpful. You seem to have resolved a number of matters, which apparently aren't contested, and the Court appreciates

the time that is saved by doing it.

All right, you may call your first witness, then, Mr. Fuchs.

MR. FUCHS: Your Honor, just prior to that, I would at this time like to introduce into evidence the portions of the transcript of the deposition of Margaret Wilkinson.

THE COURT: You may read them.

MR. FUCHS: (reading)

"Q I am asking you, now that you presently recollect receiving this letter..." --

Your Honor, this letter, and we are referring to it, is the letter that is Plaintiffs' Exhibit P-1 --

"...this letter, do you have any present recollection of what you did with it and the contents, if any, other than your answer, because of what you normally do?"

Other Counsel: "I object to the form of the question. The witness may answer."

"A Well, I would have delivered the letter to Morgan, Lewis and Bockius.

"Q Do you remember having delivered it to Morgan, Lewis and Bockius?"

Your Honor, I beg your indulgence, I read a subsequent part. I was looking at the next page, and I read a part of the transcript before I got to it -- I am reading it

out of order. May I read the first part of it.

I am now reading from Line 4 on top of page 23, and I will make a hiatus on line 8 of page 24.

"Q All right. Now, with that in mind, Mrs. Wilkinson, do you now have any present recollection of receiving Plaintiffs' Exhibit 1 for identification?

"Does this in any way refresh your recollection about actually receiving Plaintiffs' Exhibit 1 in view of the fact that you say you recall having discussions which arose from your receipt of Plaintiffs' Exhibit 1? Do you now recall a little more clearly receiving that?

"A Yes, I remember.

"Q You remember receiving it?

"A Yes.

"Q Do you remember whether or not the enclosure that is stated in this letter of Plaintiffs' Exhibit 1 was enclosed with this letter when you received it?

"A I have no reason to doubt it, but I cannot picture the proxy card.

"Q All right. Would you say now, from your recollection, as jarred by our discussions here, would you say now that if the enclosure were not enclosed with the letter, you would recall it not being enclosed?

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"A I would believe so.

"Q And would you recall if the enclosure was any different than set forth therein? Do you think you would recall that?"

Other Counsel: "I object to the form of the question, but the witness may answer it."

"A I would believe I would.

"Q Thank you."

Now, I will proceed to read from line 4, page 23, and terminate on line 8, page 24.

MR. CASH: No. It is 28.

MR. FUCHS: I am sorry. I will proceed to read from line 4, page 28, and terminate on line 19, page 28.

"Q I am asking you, now that you presently recollect receiving this letter, do you have any present recollection of what you did with it and the contents, if any, other than your answer, because of what you normally did?"

Other Attorney: "I object to the form of the question. The witness may answer."

"A Well, I would have delivered the letter to Morgan, Lewis and Bockius.

"Q Do you remember having delivered it to Morgan, Lewis and Bockius?

"A Yes, I think I do.

"Q Do you now recall if there was a proxy enclosed with that letter?

"A As I said, I received so many that I can't narrow this one down."

I would now like to call to the stand my first witness, Mr. Oscar Gruss.

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O S C A R G R U S S, called as a witness, being first duly sworn, testified as follows:

THE WITNESS: I am a partner of Oscar Gruss & Son.

DIRECT EXAMINATION

BY MR. FUCHS:

Q Mr. Gruss, are you the plaintiff, Oscar Gruss, in this action?

A Yes.

Q Mr. Gruss, do you own or have you ever owned any securities issued by the defendant, Curtis Publishing Company?

A Yes.

Q I show you, Mr. Gruss, a document which purports to be a proxy statement from The Curtis Publishing Company, pertaining to an annual meeting of shareholders on September 14, 1972.

THE COURT: Mark it for identification.

XXX (Plaintiffs' Exhibit 2 marked for identification.)

Q I ask you to look at the document at this time, and I ask you if you have ever seen that document before, Mr. Gruss.

A Yes. I gave this to Julie Anreder.

Q Mr. Gruss, this document describes a plan of recapitalization, and I ask you if you are familiar with the plan of recapitalization as outlined in this document.

A In general terms.

Q In general terms. Thank you.

Mr. Gruss, did you ever vote your shares in favor of the plan of recapitalization?

MR. CASH: Objection, your Honor.

THE COURT: Sustained.

Q Did you vote with respect to the plan of recapitalization?

MR. CASH: Objection, your Honor. The question of fact in this case in part is whether a vote did take place. So, I think it is a question of law, of Pennsylvania law, as to whether a vote did take place. I don't object to eliciting statements of what this witness may have done or may have not done, but voting is a conclusion.

THE COURT: I think he should be asked what he did rather than asked to give us the conclusion. And there is a difficulty with the use of the word "you" here, you see. So, please reframe the inquiry.

As I understand it, the sending of this letter has been stipulated to, and it has already been stipulated that Exhibit 1 was signed by Mr. Gruss with the name "Oscar Gruss & Son". That is already before me, isn't that so?

MR. FUCHS: Yes, it is, your Honor.

THE COURT: He may be asked if there was a proxy enclosed therewith, and, if so, who signed it, and what it said.

MR. FUCHS: May I please see Defendant's Exhibit A.

Q Mr. Gruss, I show you Defendant's Exhibit A in evidence, and I ask you to look at it at this time. I ask you to look at the handwriting above the signature, and I ask you, Mr. Gruss, did you place that signature thereon?

A No,I did not.

Q Did you authorize that signature to be placed thereon?

A No.

Q Did Oscar Gruss & Son authorize that signature to be placed thereon?

A No.

Q Did you ever authorize any proxy to be voted in the same manner as that to be executed?

A No.

MR. CASH: Your Honor, I have a general objection to this question of authorization.

THE COURT: He can tell what he did.

MR. CASH: He can tell whether he in fact did something or did not do something, but authorization --

THE COURT: I am taking it as an inquiry as to what he did with respect to that document.

MR. FUCHS: Will the reporter please read the last question.

THE COURT: Frame a new question, please, Mr. Fuchs.

Q Mr. Gruss, did ycu at any time authorize anybody to execute a proxy --

THE COURT: Did he direct or instruct.

Q Did you direct or instruct anybody to execute a proxy that would vote on this matter in the same way as this did?

A No.

Q Did you ever so execute such a proxy yourself?

A No.

Q Did Oscar Gruss & Son ever execute such a proxy?

A No.

MR. FUCHS: I have no further --

MR. CASH: Your Honor, I move to strike that last statement.

THE COURT: Motion denied. You may cross examine when your opportunity comes.

MR. CASH: No, not on that question. The question was, your Honor, did Oscar Gruss & Son ever authorize. Now, Oscar Gruss & Son is a company, and the question is, as a matter of law, what occurred.

THE COURT: The man is supposedly testifying as to his own knowledge, and you may cross examine him as to what he did.

MR. FUCHS: I have no further questions of this witness.

THE COURT: All right.

CROSS EXAMINATION

BY MR. CASH:

Q Mr. Gruss, I show you this document --

THE COURT: Mark it for identification, first.

XXX (Defendant's Exhibit B marked for identification.)

Q -- marked Defendant's Exhibit B for identification, and ask you whether you have ever seen this document before.

MR. FUCHS: May I see that document, your Honor?

A Yes.

THE COURT: After the witness has answered, I am sure it will be offered.

Q Could you describe whose signature that is on that letter?

A Oscar Gruss & Son.

Q Do you recognize who placed that signature on it?

A I placed the signature.

Q Can you describe whose letterhead this is?

A Oscar Gruss & Son.

MR. CASH: Your Honor, this is a copy of a letter that originally was in our files, the original of which I can't find, but I was fortunate enough to be able to find a copy that I have.

THE COURT: Show it to Mr. Fuchs.

MR. CASH: And I would like to offer it in evidence at this particular time.

MR. FUCHS: I have no objection to the letter. However, there is annexed to the letter a list, I don't know what that is, and I would object to the inclusion of the list with it.

THE COURT: As to the list, I will permit counsel to inquire of the witness.

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MR. CASH: Your Honor, I am not going to offer the list. It is only that it was attached to the letter, but the significance --

THE COURT: We don't know that yet.

MR. CASH: May I be permitted to ask the witness questions with respect to it?

THE COURT: You may ask him as to the list, certainly.

Q Mr. Gruss, I show you this letter of September 21, '72, and ask you whether you can identify the second page, which was attached to the letter.

A What is the question?

Q Can you identify the second page to the letter?

A Yes.

Q Will you describe to the Court what you remember that being.

A This is a list of stock certificates, all of them $4 preferred, which accompanied the Oscar Gruss letter to B. R. SerVaas of 9/21/1972.

MR. CASH: Your Honor, I offer both the first and second pages of this letter into evidence.

MR. FUCHS: I object to the second page, because he simply read as to what this list was.

THE COURT: I had understood the witness to tell

me that the list accompanied the letter. It is his letter with his signature.

MR. FUCHS: I withdraw my objection.

THE COURT: And he presumably would know whether the list accompanied the letter at the time it was sent out.

MR. FUCHS: I withdraw my objection.

THE COURT: Do you understand the last question he asked you?

THE WITNESS: Yes, I do understand.

THE COURT: All right.

XXX (Defendant's Exhibit B received in evidence.)

MR. CASH: I have no further questions of this witness, your Honor.

THE COURT: What is the contention with respect to the written notation at the bottom where it says, "Please return ten shares," on Exhibit B?

A This was written by Curtis Publishing.

MR. CASH: May I say, your Honor, that I am not offering this evidence in to include -- I failed to mention that -- the handwritten notation.

THE COURT: All right. The handwritten notation is excluded. Thank you.

Any further cross examination?

MR. CASH: No further cross, your Honor.

MR. FUCHS: No, I have nothing further.

THE COURT: All right, you may step down, Mr. Gruss.

(Witness excused.)

MR. FUCHS: For my next witness, I wish to have Mr. Julius Anreder.

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J U L I U S A N R E D E R, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

THE COURT: You may examine.

MR. FUCHS: If your Honor pleases, as we pointed out before, Mr. Anreder will be both a normal witness and an expert witness. What I will do is, I will commence with some of the questions that have nothing to do with his function as an expert witness, and, therefore, even in the introduction of him, I will not go into his qualifications at this point. I will proceed later on into that when I introduce the expert testimony.

THE COURT: And then you will permit your adversary to cross examine as to the non-expert testimony before?

MR. FUCHS: Well, I had expected that we would finish everything, all the direct testimony of this witness,

and then have cross examination later.

THE COURT: And this is the last witness you have?

MR. FUCHS: That is correct.

THE COURT If you gentlemen are agreeable to a procedure of that nature, I will abide by it.

MR. CASH: I am agreeable, your Honor.

THE COURT: All right.

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DIRECT EXAMINATION

BY MR. FUCHS:

Q Mr. Anreder, are you presently employed?

A Yes.

Q Where are you employed?

A Oscar Gruss & Son.

Q Is that the plaintiff, Oscar Gruss & Son?

A Yes, it is.

Q What is your position with Oscar Gruss & Son?

A I am the director of research of Oscar Gruss & Son, securities research.

Q Could you please tell me how long you have held that position with Oscar Gruss & Son?

A Approximately twelve years.

Q Mr. Anreder, the parties have stipulated that you would testify to certain things upon this trial. I am going

to read that stipulation to you and ask you whether or not you agree that that testimony is true.

We agree that you would testify that, upon directions from Oscar Gruss to prepare whatever documents were necessary to obtain rights of appraisal by reason of the recapitalization set forth in the proxy that was previously introduced into evidence, that you prepared a letter dated September 12, 1972, which has been introduced as Plaintiffs' Exhibit 1, and filled out a proxy card voting against the recapitalization, and delivered them on September 12 to Mr. Gruss for execution; that Mr. Gruss did not personally -- excuse me -- that, pursuant to Mr. Gruss's directions, that you personally enclosed the proxy voting against the recapitalization in an envelope, which has already been introduced as Plaintiffs' Exhibit 1; that you included that in an envelope and enclosed therewith the September 12, 1972 letter; that you sealed the envelope and that you gave same to the mailing department of Gruss & Son with directions that it be mailed to the addressee.

Now, Mr. Anreder, are those statements that I read true?

A Yes.

Q Mr. Anreder, I show you a copy of a document that purports to be a proxy with the name of Oscar Gruss & Son

typed or printed in the left hand thereof.

I ask you to look at it at this time.

THE COURT: That is Exhibit B that he has?

MR. FUCHS: I will offer it for identification at this point.

THE COURT: Don't show the witness anything unless you mark it first.

MR. FUCHS: May we have this marked for identification, please.

XXX (Plaintiffs' Exhibit 3 marked for identification.)

Q I ask you to look at this document, which is marked Plaintiffs' Exhibit 3 for identification, at this time.

A Yes.

Q Mr. Anreder, can you compare that document with the proxy that you filled out, voting against the plan?

A Yes. It is similar, it is exactly the same, except I can't swear for the numbers in either corner, the top left or top lower corner.

(Answer read.)

Q Other than those numbers, are there any other differences that you recall between the document you are looking at and the proxy card that you filled out voting

against the plan?

A No.

MR. FUCHS: May I see Defendant's Exhibit A, please?

Q Mr. Anreder, I ask you to look at the reverse side of Defendant's Exhibit A into evidence, and I would ask you if you would ignore how that reverse side is filled out.

I will ask you if you can compare that card with the other side of the card that you completed, that you filled out voting against the plan.

A Yes. To my recollection, it is pretty much the same.

Q So that, Mr. Anreder, would you say, then, that a true representation of what the blank card looked like is represented by --

MR. CASH: Objection, your Honor.

THE COURT: Sustained.

MR. FUCHS: At this point, I would like to introduce into evidence the document that is marked for identification as Exhibit 3.

MR. CASH: Your Honor, I object to this being offered into evidence as there is no proper foundation been laid for this particular type of document.

MR. FUCHS: Your Honor, I am only using this as a

comparison, as a standard by which he can illustrate to the Court what the form of proxy looked like. He is not saying that this is the proxy. I asked him to compare this with his recollection.

THE COURT: There is no proper foundation to receive that document in evidence. We don't know where it came from. Perhaps you would tell me where did this exhibit come from? Do you want me to ask the witness?

MR. FUCHS: No, I will ask him. The only thing is, I would ask him where this came from, but, again, theoretically, if I had printed this document in my office just before the trial and he said that this looked exactly like the document that he filled out, wouldn't this be a proper test and be able to be introduced as a standard?

THE COURT: I doubt it. I don't think that would become -- it wouldn't have any probative force. I would permit this witness to testify, if it be the fact, that he filled out a document, tell us what the document was and what he wrote on it, and when and where he last saw the document.

And I assume that you have made some attempt to get the document from either Morgan, Lewis and Bockius, which apparently on the present record we have, I gather, a secretary of some capability and competence, who received a letter which said that it had an enclosure in it, and she believes

she took the letter to Morgan, Lewis & Bockius. And I suppose that warrants an inference that the enclosure was there; that if the enclosure wasn't there, she would have told the attorneys or she, herself, would have written back and said, "We have your letter but no enclosure."

But, as far as this particular paper getting any weight in the case, I don't see any basis for taking it.

He may tell what he did. You may show him Exhibit 1 and ask him what participation, if any, he had in connection with that letter.

MR. FUCHS: You see, your Honor, I believe that has already been stipulated to.

THE COURT: All right.

MR. FUCHS: The only thing that I feel that I would like to clarify is just what the proxy card looked like, and since we don't have it, I am trying to create a standard.

THE COURT: You may ask him whether it was a printed proxy that he had and where he obtained it, what size it was; any of those things, you may ask him.

Q Mr. Anreder, did the proxy that you filled in, voting against the plan, have the name of Oscar Gruss & Son printed on it?

MR. CASH: Your Honor, I move that that type of question be struck.

THE COURT: Because it is leading?

MR. CASH: Because it is leading.

THE COURT: All right. Frame a new question. You can ask him precisely what he did with respect to Exhibit 1. You may show it to him and ask him what he did, step by step.

MR. FUCHS: I believe, as I said, that has been taken care of in the stipulation.

THE COURT: All right, then you may rest on the stipulation.

At the present state of the record, there is some showing from which the trier of facts could infer that a proxy voting against proposal No. 3 was contained in the September 12 letter. There is no evidence to the contrary.

Now, I don't know what evidence the defendants have. Maybe they are going to come forward with someone who is going to tell us that there was no such enclosure.

Q Mr. Anreder, have you ever seen this document before?

MR. CASH: Your Honor, I object to the use of that particular document.

MR. FUCHS: I am asking now to identify it.

THE COURT: I will let him try to identify it.

MR. CASH: This document merely is a copy of some

card.

THE COURT: Let him tell us. He knows, and you and I don't.

A This is a copy of a proxy card which was received in my office.

THE COURT: When did you personally make the copy?

A I don't know. I don't remember.

THE COURT: Where is the original one?

A That I don't know.

MR. FUCHS: The original has not been found, your Honor, and this is an office copy that he had.

THE COURT: Do you contend that this is the office copy of what you contend was enclosed in the September 12 letter?

MR. FUCHS: No, your Honor. We contend that this is an office copy of another proxy that had been sent to them, as many proxies had been sent to the plaintiff.

MR. CASH: Based upon counsel's statement, your Honor, I must object to this as not being even connected with the proxy in question.

THE COURT: He can make an offer of proof with respect to it. I will permit him to state what he contends it is. But, it doesn't have anything to do with this lawsuit.

This is some other proxy? Let me see the document.

MR. FUCHS: Your Honor, if I may state again, we do not have the original or a copy of the proxy voting against the plan. In order to show the Court exactly what the form of proxy looked like, we do have another blank form of that which we simply wanted to show was the form of the proxy.

It is not an essential part of the case, but I thought it would clarify it.

THE COURT: There is no proper foundation for taking it. On a proper showing, I certainly would take the original, and if you can explain where it went, you probably could offer the copy. But, I have no proper foundation for taking this particular Plaintiffs' Exhibit 3 for identification. I will sustain the objection.

Q Mr. Anreder, will you describe, with respect to the proxy that you filled out voting against the plan, could you describe whether there was any name set forth on the proxy before you filled it out?

MR. CASH: Your Honor, I move again that is still leading. The witness can testify what he saw, what he observed.

THE COURT: It is leading. Yes, what he did and also what he enclosed in the letter. He may be shown the

letter if need be, to make the question clear.

Q Mr. Anreder --

THE COURT: You see, your difficulty is that leading questions -- testimony elicited by leading questions doesn't always have the weight which you would get if you asked him a simple direct question and he gave you a simple declarative answer.

Q Mr. Anreder, could you describe what was contained on the proxy card that you filled out voting against the plan?

A Yes, I can. The proxy card which I filled out, voting against the plan, came in as part of the company's proxy solicitation into our office. It had the name, Oscar Gruss & Son, printed. I believe it was sort of an IBM-type printing, and it listed in the center, on the top, the number of shares.

Q Could you please tell me what was printed with the IBM-type printing?

A It said, Oscar Gruss & Son, 80 Pine Street, New York, New York.

MR. FUCHS: I have no further questions of this witness.

THE COURT: What did you do with respect to that card?

A I had Mr. Gruss sign it, and I attached it to the letter, and I put it in an envelope and brought it to the cashier's office,who runs our mailing operations, and instructed them to mail it registered mail.

THE COURT: Is this a letter that you dictated, this Exhibit 1?

A Yes, it is. I haven't seen this, but I know that I dictated the letter.

THE COURT: Take a look at it (handing).

A Yes, it is.

THE COURT: All right.

Any other questions?

MR. FUCHS: No, I don't have any.

THE COURT: All right.

Mr. Cash, you may cross examine, just as to the direct testimony.

MR. FUCHS: Your Honor, may I ask a few other questions?

THE COURT: Yes, certainly.

Q Mr. Anreder, in preparing the letter that is marked as Plaintiffs' Exhibit 1, and in preparing the document that you state is a proxy card voting against the plan, could you tell me how you went about preparing it, on what basis you had any knowledge as to how to prepare it?

A Well, I read the appraisal rights, which were included in the proxy statement, which was sent to us, and I tried to follow it step by step as it was outlined there in order to protect the rights of Mr. Gruss.

MR. CASH: Objection, your Honor, as to the conclusion. Let the witness testify merely what he did.

THE COURT: I will permit the part that he tried to follow it step by step to stand.

As far as Mr. Gruss's rights are concerned, I will strike that part out.

Q Mr. Anreder, I show you Plaintiff's Exhibit 2. I ask you to look at it at this time, and I ask you if this is a copy of the prospectus that you just referred to.

A Yes, it is.

Q Could you please tell the Court what section therein and on what pages you were referring to that you looked at in following step by step the procedure?

A Well, the appraisal right section in the text of the proxy statement were outlined on page 49. I guess this is the copy I must have used because it is underlined with my inimitable underlining. And that is what I used.

MR. FUCHS: I have no further questions.

THE COURT: I think, to save time, I will let Mr. Cash just to go into these issues, but then you can start

again in the afternoon on the expert testimony.

MR. CASH: Thank you, your Honor.

CROSS EXAMINATION

BY MR. CASH:

Q Mr. Anreder, when a proxy normally comes into the office, what is done with it?

A Usually, it comes across my desk.

Q And what did you do with it?

A I examine it.

Q And then what is done with the proxy?

A And then, if it is something which we have no direct interest in, it may be something for clients, I send it to the proxy department.

Q And what do they normally do with it?

A I really don't know. I mean, I assume -- I don't know for a fact, but I assume that they check it against our records and see what has to be done with the customers and how they should be voted.

Q And when you get a proxy into the office, do you make notations somewhere concerning the proxy?

A Not as a rule, unless it is something that I have a specific interest in.

Q Do you make a copy of the proxy?

A A photostatic copy of it?

Q Yes.

A No, I don't.

Q The document that was shown to you before, marked as Plaintiffs' Exhibit 3, I ask you, is this what you testified prior as being a copy of the proxy that you sent in to Curtis?

A If I could say one thing: This is a copy of a proxy; it is not a copy of the proxy that I sent in.

Q How do you know?

A Well, obviously, it is not signed.

Q But, is this copy dealing with the same 12,560 shares that are involved in this lawsuit?

A Yes.

Q And this copy is not signed?

A That's right.

Q And this document is found in the records of Gruss & Sons?

A I am not sure if that one, the original of that one is in our files or it is in the attorneys' files.

Q But, it originally came from your files, did it not?

A It came from Oscar Gruss & Son, yes.

MR. CASH: Do you have the original of this?

MR. FUCHS: No, I don't. We have searched to try to find it. We have been unable to find it.

Q But, as you said, this particular document deals with the stock that is in issue in this lawsuit, does it not?

A Yes, it does.

Q Do you remember what the proxy statement said that was forwarded with the letter of September 12?

A Do I remember?

THE COURT: The proxy.

MR. CASH: Excuse me?

THE COURT: The proxy. Not the proxy statement. The proxy, itself.

Q The proxy card that you testified to.

A I don't understand the question.

Q Do you remember the words that were on it?

A I remember that it was Oscar Gruss & Son, the number of shares, and --

Q You remember all, everything that was on it? Can you state now from memory what was on that?

A No, I couldn't.

Q You therefore would not be in a position to compare exactly from memory now whether a card exhibited to you today would have been the same card that was sent in on the day

that you testified to?

A I am sorry. I did not understand the question.

Q You could not, therefore, testify now that to the word one card was exactly like the other?

A Well, I did not testify that they were exactly like the other. I said that I couldn't swear to the numbers on the left hand side.

Q Could you swear to all the words that existed on it?

A The words that were relevant to me, the name and address of the firm, and the number of shares, yes.

Q But, other than that, you couldn't testify it was the exact same proxy card, could you?

MR. FUCHS: I object. He has not testified it was the exact same proxy card.

THE COURT: Maybe he will, and you can renew your offer. Objection overruled.

MR. CASH: Your Honor, at this particular time, I would like to offer in evidence, it having been identified as a copy of a card which can no longer be found, a proxy card which was found in the records of Gruss & Son.

THE COURT: After the lawsuit began.

MR. CASH: I would imagine so. May I ask?

THE COURT: Certainly.

Q Mr. Anreder, do you know when this document, which is the copy of a proxy card, marked Plaintiffs' Exhibit 3 for identification, was found in your records?

A I don't remember when.

Q Was it after or before --

A I can say that prior to the vote, we had received a number, I don' remember whether it was two, four or six, of proxy cards exactly similar to that, in the form of the company's proxy solicitation procedures.

If they don't get a proxy back very quickly, they have the second, third or fourth mailing. They get them.

Q Excuse me, Mr. Anreder, I am asking you specifically when you found this card.

A I don't remember.

Q When was the first time you saw this card?

A This particular card?

Q Yes.

A I don't remember.

MR. CASH: I offer it in evidence.

MR. FUCHS: I have no objection.

THE COURT: Received in evidence as Defendant's Exhibit C.

XXX (Defendant's Exhibit C received in evidence.)

Q Mr. Anreder, you previously mentioned that you read the prospectus that dealt with the reorganization, did you not?

A I didn't testify to that today. I just said that I referred to the appraisal right section.

MR. CASH: May it please the Court, I think there is some confusion between counsel. May I ask my adversary a question?

THE COURT: Off the record?

MR. CASH: Off the record.

THE COURT: Yes.

(Discussion held off the record.)

MR.CASH: Your Honor, as between counsel, we have stipulated prior, and just to clear the record, the notice of the annual meeting, dated September 14, 1972, previously referred to as Plaintiffs' Exhibit 2 for identification, should have been placed into evidence in the course of the trial, and it really should be a piece of evidence.

THE COURT: I have a copy of such a notice attached to the stipulation of agreed facts, which you gentlemen signed on September 10th.

MR. CASH: Yes. I am merely trying to clarify the document, as the document is now only marked as an identified document.

THE COURT: He is offering it and it is received in evidence.

MR. FUCHS: Correct.

THE COURT: No objection. What is the number of it?

MR. CASH: It is number 2.

THE COURT: Plaintiffs' Exhibit 2 received in evidence.

XXX (Plaintiffs' Exhibit No. 2 received in evidence.)

Q You previously indicated to the Court, Mr. Anreder, that you read the appraisal rights that were set forth on page 49 of the prospectus, did you not?

A Yes, I did.

Q Did you also read the Pennsylvania statute as set forth on page 92 of the prospectus?

A Yes, I did.

Q Did you read both of these prior to your having prepared the letter in question and mailed it, as you previously testified?

A Yes, I did.

Q Isn't it true, Mr. Anreder, that both sections referred to, and in particular the statute, states that it shall be the shareholder that shall file and execute the

right of appraisal, does it not?

A Yes, it does.

Q I believe the evidence has already indicated that Oscar Gruss & Son is the -- was the record owner at this time of the shares in question.

A I believe so.

Q And you were employed by Oscar Gruss & Son, were you not?

A Yes, sir.

Q You weren't employed by Oscar Gruss, were you?

A No.

Q Could proper execution, in compliance with the statute as you read it, have been by Oscar Gruss & Son?

A By Oscar Gruss & Son, yes.

Q And you could, therefore, have executed this right of appraisal under the name of Oscar Gruss & Son.

A Yes.

Q And as this company is the record owner.

A Yes.

Q You were, therefore, Mr. Anreder, exercising your rights of appraisal on behalf of the record owner, were you not?

MR. FUCHS: I object.

A When I wrote that letter, I was writing it on behalf

of the beneficial owner.

Q It is your testimony now that you were writing this letter on behalf of the beneficial owner, Mr. Gruss?

A Yes.

Q And that you were not writing this letter on behalf of Oscar Gruss & Son?

A Yes.

Q Was it your intention, therefore, that the signature that would be placed upon the letter in question over the name "Oscar Gruss" was to be Oscar Gruss as the beneficial owner?

A I have no intention as to how Mr. Gruss was to sign his name.

Q But, it was your intention that it was to be exercised on behalf of the beneficial owner, is that correct?

A Yes.

Q Did anything prevent you from exercising this on behalf of the record owner?

A No.

Q There is nothing in your knowledge that would have prevented you from signing -- withdrawn.

THE COURT: In 1972, did you sign the firm name?

A Did I sign? No, I did not.

THE COURT: To anything?

A No.

THE COURT: Did you have the authority to sign the firm name?

A Today, I don't have the authority to sign the firm's name.

Q You were describing before the procedure on voting proxies. You said that they came across your desk and you passed upon them.

What would you then do with the proxy if you wanted to take particular action against the procedure that was being called for?

A If it was something which I -- I did not pass upon the proxies. I said that I retained the ones I had a particular interest in and gave the others to the proxy department.

Q What would the proxy department do with them, with the ones that you didn't have an interest in?

A Well, they would check it against the firm's records to determine who were the proper owners of it, and then I assumed that they would check with the people if they had to, you know, if the rules required, to check to see how they wanted to vote them.

Q Do you know how they mechanically proceeded to execute these cards and mail them or deliver them?

A No, I have no knowledge.

Q You have no knowledge on that, how that was done.

A Not the mechanics of it, no.

Q You don't know how any stamps were placed upon them?

A No.

Q You don't know how any signatures or any indications were placed upon them?

A No.

Q Do you know if they were ever sent to beneficial owners of stock?

A I don't know. I assume they would.

Q I am asking you whether you know of your own knowledge whether they were ever sent to beneficial owners of stock?

A I don't know.

THE COURT: Isn't there a stock exchange rule on this subject?

A Yes, this is what I was referring to before. Certain things --

MR. FUCHS: Your Honor, if you will take judicial notice at this time of that stock exchange law, I happen to have a copy of it.

THE COURT: The man has twelve years in the street. He probably knows it better than you and I, doesn't he?

MR. FUCHS: I am sure he does, but I have the exact wording here.

THE COURT: Don't interrupt cross examination. We will come back to it. I am prepared to take judicial notice of it if need be.

Q But, you have no knowledge of how these proxies are signed?

A Unless it is something that I have a particular interest in.

Q If you have a particular interest in some proxy, how would you proceed with it?

A I would take it to a partner and make sure that he signs it.

Q How are the others?

A Emanuel Gruss, Oscar Gruss, Harvey Gelfenbein.

THE COURT: This is a member firm of the New York Stock Exchange?

A Yes, sir.

Q What would they do with the proxies?

A They would sign them.

Q But you don't know what happened to the other ones that went to the proxy department?

A I don't know.

Q What is your present position with Oscar Gruss &

Company?

A I am the director of research, securities research with the firm.

Q Do you have any beneficial interest in the partnership other than as an employee?

A No.

Q Do you have a contract with them?

A No.

MR. CASH: I have no further questions, your Honor.

MR. FUCHS: Your Honor, I have a few redirect.

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REDIRECT EXAMINATION

BY MR. FUCHS:

Q Mr. Anreder, pertaining to the proxy that you testified to that you filled out voting against the plaintiff's recapitalization, will you please explain to the Court how you filled out that card and what you placed upon that card?

A I can't remember, you know, exactly. I filled in the date and that we were voting against the plan of reorganization, and then I had Mr. Gruss sign it.

Q Will you please tell me how you filled out that you were voting against the plan of reorganization?

A There were boxes to be checked as to how your votes were, and as I recall the instructions were that if you did not give any instructions, it would be considered a vote for. So, I made sure to check the boxes to say no.

MR. FUCHS: I have no further questions.

MR. CASH: Your Honor, may I?

THE COURT: Yes, you may.

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RECROSS EXAMINATION

BY MR. CASH:

Q Mr. Anreder, in addition to these 12,560 shares, were there any other shares being held by Oscar Gruss & Son as a recordholder in Curtis?

A I believe there were, but I am not a hundred per cent sure.

Q Do you remember how many other shareholders were involved?

A No.

MR. FUCHS: I object to the question. I don't believe it would be relevant.

THE COURT: It might be relevant. I will let him answer. He doesn't know.

A I don't know.

Q Do you know the names of any beneficial owners

other than Mr. Gruss, for whom Oscar Gruss & Son was holding Curtis shares?

A No.

Q Do you know whether there were any shares other than the $4.00 preferred being held by Oscar Gruss & Son as a record owner?

A I don't know.

Q Isn't it true that Oscar Gruss's wife, I believe, held some shares as beneficial owner?

MR. FUCHS: I object to the question.

THE COURT: Overruled.

A I don't know.

Q Do you remember voting any other shares of Curtis with respect to this particular transaction?

A No.

Q Do you remember any other proxy cards arriving at Gruss & Son with respect to this conversion, other than for the card that you previously testified to?

A I really don't remember.

MR. CASH: I have no further questions.

MR. FUCHS: Your Honor, except to continue now with the matter of the valuation, which I believe I will do after lunch, with the Court's approval.

THE COURT: On this Exhibit A, Mr. Anreder, have

you ever seen that blue rubber stamp that is on there?

A I don't know if I have seen the exact stamp, but it is similar to stamps that we have in the office, yes.

THE COURT: All right. We will break for the noon recess. I would expect to resume around two-thirty.

(Luncheon recess.)

AFTERNOON SESSION

2:30 p.m.

J U L I U S A N R E D E R, resumed.

MR. FUCHS: Your Honor, I would like to ask one or two more questions pertaining to matters other than the valuation.

THE COURT: All right.

MR. FUCHS: I also have a couple of other documents I would like to attempt to introduce into evidence.

THE COURT: All right. Let's go forward with it as fast as we can.

FURTHER DIRECT EXAMINATION

BY MR. FUCHS:

Q Mr. Anreder, you have testified that you prepared the letter of September 12, 1972, in behalf of Oscar Gruss rather than in behalf of Oscar Gruss & Son.

Can you please tell me, sir, why did you prepare it in behalf of Oscar Gruss rather than Oscar Gruss & Son?

A Because he was the shareholder, and as far as I read the appraisal rights in the proxy statement, it called for it to be written by the shareholder. He was the beneficial owner of the shares.

Q Mr. Anreder, does Oscar Gruss & Son have an office file in their normal course of business where they maintain

correspondence on this particular matter between Oscar Gruss and Curtis Publishing Company?

A Yes, we do.

Q Are you familiar with that file?

A Yes. I have it with me, as a matter of fact.

Q Do you have that file with you?

A Yes.

Q May I take a look at it.

I am taking from that file, Mr. Anreder, a copy of a document that -- a document that purports to be a copy of a letter dated September 21, 1972, from Oscar Gruss to Mr. Beurt SerVaas, Chairman of the Board of the Curtis Publishing Company. I will ask you to look at it at this time.

THE COURT: Mark it for identification.

MR. FUCHS: I am sorry.

THE COURT: Don't show the witness anything without marking it.

Is it just a copy of Exhibit B?

MR. FUCHS: Yes, it is, your Honor.

THE COURT: What are you offering it to show?

MR. FUCHS: I just want to show that we have a copy of it in the office files.

THE COURT: Exhibit B is in evidence, and there is no question about its authenticity, as far as I know.

You are not disputing it, are you?

MR. CASH: I am not disputing that particular exhibit, your Honor.

THE COURT: If you want to make an offer of proof, what is it you want to show?

MR. FUCHS: I just want to show that there was a copy in the office file and what the office file contained.

THE COURT: A copy of Exhibit B.

MR. FUCHS: That is correct.

THE COURT: All right, the authenticity of Exhibit B is not questioned, unless you wish to show you have a second sheet on it. Is that it?

MR. FUCHS: No, I just want to show there is a copy of it in the Oscar Gruss files.

THE COURT: I will take that as demonstrated. Not contested.

MR. FUCHS: Will this be marked in evidence?

THE COURT: If you like. Purely cumulative.

MR. FUCHS: Please mark this.

XXX (Plaintiffs' Exhibit 4 received in evidence.)

Q Mr. Anreder, I am taking from the office file that you gave me another document that purports to be a copy of another letter, dated September 21, 1972, this one purporting

to be from Oscar Gruss & Son, to the same address as the other September 21 letter, that is, Beurt SerVaas, Chairman of the Board, Curtis Publishing Company.

MR. FUCHS: May we please mark this document for identification.

XXX (Plaintiffs' Exhibit No. 5 marked for identification.)

Q I ask you to take a look at this document at this time.

THE COURT: Are you offering it?

MR. FUCHS: Yes, I will.

THE COURT: Why don't you show it to your adversary. Perhaps there is no objection, and we will just take it in evidence and move right along.

(Handed to Mr. Cash.)

MR. CASH: I have no objection to this document, your Honor.

THE COURT: It may be received in evidence.

XXX (Plaintiffs' Exhibit No. 5 received in evidence.)

Q Mr. Anreder, I am taking from the office file that you gave me --

THE COURT: Excuse me just a moment. I have Exhibit 5 for identification, which appears to me to be

identical to Exhibit B except that it doesn't have a second sheet. You said you had another September 21 letter. Where is that?

MR. FUCHS: That is here, your Honor.

THE COURT: You are offering that?

MR. FUCHS: That is correct.

THE COURT: Exhibit 4?

MR. CASH: That second letter, your Honor, what exhibit would that be in evidence?

THE COURT: That is number four.

MR. CASH: That is the second one that was placed in, is it not?

THE COURT: Yes. Dated September 21.

Q Mr. Anreder, I am taking from the office file that you gave me another document that purports to be an original of a letter from Morgan, Lewis & Bockius regarding the Curtis Publishing Company, and it is addressed to Oscar Gruss & Son, dated September 22, 1972.

MR. FUCHS: Will this please be marked for identification.

XXX (Plaintiffs' Exhibit No. 6 marked for identification.)

MR. FUCHS: Does Mr. Cash have any objection to the introduction of this?

MR. CASH: Yes, I do, your Honor.

THE COURT: State the objection.

MR. CASH: The objection is that a proper foundation has not been laid for the introduction of this particular letter, who signed it or who prepared it.

I also object on the grounds of materiality. This particular letter deals with the controversy as it existed subsequent to the point of time, which is in issue in this particular case.

THE COURT: There is no question of demand and refusal, is there?

MR. FUCHS: Your Honor, there might be. There might also be a question as to just when it was refused, how it was refused, and I believe that this document clearly sets forth a picture as to how Curtis refused it, and therefore that they did not comply with the Pennsylvania statute.

I also feel that a foundation has been laid in that it was found in the office file of the plaintiff, kept in the ordinary course of business, so that it can be admissible as such.

THE COURT: I don't like to make hard work out of something we don't need to. I gather they concede they did not grant him any appraisal rights. They claim they don't have to. That is what the lawsuit is all about, isn't it?

MR. CASH: That is correct. It all hinges on the evidence which has already gone in, your Honor.

THE COURT: But, you see, there is some showing in this letter that the lady, who is Mr. SerVaas's secretary, turned the original letter over to Morgan, Lewis & Bockius.

MR. CASH: Yes, your Honor.

THE COURT: The Court knows that when this matter was first on the docket, the firm of Morgan, Lewis & Bockius were here. We ought not to prove that they wrote the letter on behalf of Curtis, should we?

MR. CASH: No. In addition to objecting on the basis of proper foundation, I am also objecting as to the correspondence that went on subsequent to rejection of the stock. The appraisal is not at issue in this particular case and really doesn't bear on it.

What the opinion of Morgan, Lewis, Bockius may have been at that time and whether it would be in my favor or not is really immaterial.

THE COURT: The opinion is not relevant, is it? They already rejected his request?

MR. FUCHS: Your Honor, this was the first time that there was a rejection of the request. It is not after the rejection.

Secondly, your Honor, the letter sets forth the

grounds for the rejection, which I believe, therefore, might have some bearing upon whether there was any other reason for objection. Specifically, your Honor, the letter makes no mention of the alleged proxy voting in favor of the plan, and I th[illegible] its introduction in evidence might have some bearing as to whether or not there really was such a proxy legitimately received. For that reason, I think it would have some probative value.

THE COURT: I think probably I would have to take it on that basis. I assume that there is no bona fide question as to whether Morgan, Lewis & Bockius was acting for Curtis in this controversy, is there?

MR. CASH: Well, there may have been, but they were acting on their behalf as attorneys at that particular time, and I don't feel I should be bound, especially as subsequent attorneys, by statements that were made by some member of the law firm on a question of fact.

As counsel indicated, if it is going to raise some kind of problem with respect to whether an action was taken or was not taken to prove some fact in this case, I find that the action taken subsequent to the point in time is quite irrelevant. Not only that, I am prejudiced by the situation that now I don't have this individual who may have written this letter here to cross examine and have him explain it.

THE COURT: Since the refusal to accept or act upon his various letters is conceded, I am going to sustain the objection to Exhibit 6 for identification.

I must say to you that I don't think, under the surrounding circumstances, the writing of that letter would be any evidence that his shares were not voted affirmatively in favor of the merger.

MR. FUCHS: With all respect, your Honor, I respectfully take exception to the ruling.

THE COURT: Certainly.

MR. FUCHS: Your Honor, there was subsequent correspondence between my office -- and I have copies in my office file -- pertaining to compliance with the statute. That is, the statute requires that demand be made and that shares be sent in to the company.

I have correspondence in my file that shows that as well as the response from Morgan, Lewis & Bockius.

THE COURT: I gather that they concede that he made a timely demand to have his shares annotated and tendered his shares, and they rejected it. There is no argument about that. That is why you are both here today. Isn't that right?

MR. CASH: That is correct, your Honor.

MR. FUCHS: Will opposing counsel concede that

other than with respect to the alleged affirmative proxy as to whether or not the demand was with respect to the record or beneficial holder, that the plaintiff in all respects complied under the statute for the right of appraisal, and I will not seek to --

MR. CASH: Your Honor, we are asked to concede a fact which really is not in issue in this particular lawsuit.

The issue in this lawsuit is whether he took the first step, which would of necessity have entitled him to a right under the Pennsylvania statute. I must admit that I wouldn't want to, although I have certain opinions on it, make a judgment now as to whether the subsequent acts were carried through. That is really not an issue in this case.

THE COURT: That is the point. Both counsel for the plaintiff and the Court are entitled to know what issues are being litigated here.

As I understand it, the issues that are being litigated here are:

First, that the demand which is contained originally in Exhibit No. 1, and thereafter reaffirmed in Exhibit No. 5, and also No. 4, was ineffectual because Exhibits 4 and 1 were not made by the shareholder of record.

Furthermore, plaintiff is not entitled to prevail because on or about September 13, according to Exhibit A, he

ostensibly voted in favor of the reorganization.

MR. CASH: That is correct, your Honor.

THE COURT: And I understand that those are the only two matters in issue.

MR. CASH: That is correct.

THE COURT: Everything else being equal, if those two issues were resolved against the defendant, he would have done all he had to do.

MR. CASH: At that particular moment, yes, as far as the issues were limited here.

THE COURT: Yes.

MR. FUCHS: If counsel will so stipulate to that.

THE COURT: He is conceding it on the record. You don't need to concern yourself with it any further.

MR. FUCHS: Your Honor, there is one other aspect, if I might mention about the letter, that was marked for identification as No. 6.

As you pointed out, there is a question as to whether or not not only the September 12 letter was written by the proper owner of the shares, that is the record, as opposed to the beneficial, but perhaps the letters thereafter that you have that have now been introduced into evidence.

It would become, I would think, important to note when for the first time it was pointed out by Morgan, Lewis,

Bockius, in behalf of Curtis Publishing Company, that the objections had to be made by the record holder. This is stated here for the first time, and it is stated on September 22, 1972.

THE COURT: The record may so indicate that you are offering that exhibit, and I have sustained an objection based only on relevancy or materiality. Mr. Cash is not pressing the question of whether Morgan, Lewis & Bockius were acting with authority or whether there is a proper foundation for the letter. But I do sustain the objection that is made.

In my view of the case, it wouldn't really have mattered if they had simply ignored the plaintiff. He could have treated that as a rejection of his request and sued. The fact that they filed an answer and are here in court indicates that they are rejecting his contentions. I don't think there is much argument over that.

Let's move along.

MR. FUCHS: Thank you, your Honor.

Your Honor, I am ready to proceed now as an expert witness with this particular witness.

THE COURT: Is there anything before we go into this testimony? Do you have any cross examination of this witness?

MR. CASH: I have no cross examination.

THE COURT: You may proceed with the same witness as an expert witness.

I must tell you, anything that he has in his hand here, while he is at the stand, has to be marked for identification, so that if he refers to it or testifies from it, counsel may see it.

MR. FUCHS: Certainly.

THE COURT: So, don't give him papers that aren't marked.

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FURTHER DIRECT EXAMINATION

BY MR. FUCHS:

Q Mr. Anreder, did you attend college?

A Yes, I did.

Q Can you tell me where you attended, please?

A New York University, School of Commerce, Accounting and Finance.

THE COURT: Does he have his experience and qualifications written out?

MR. FUCHS: No. I was planning on eliciting them from testimony.

THE COURT: They are not in writing?

MR. FUCHS: No. He is going to testify to them.

THE COURT: All right.

Q Mr. Anreder, could you tell me when you attended that college, please?

A In 1956 to '59.

THE COURT: Tell us about your career and your professional experience that you have had up until this date. Just start from the beginning of college and tell us what you have done and where you studied and what your qualifications are.

A Okay. I went to New York University School of Commerce, Accounting and Finance, where I graduated in 1959, Bachelor of Science in Economics.

I was employed in the security -- I have been employed in the securities business since 1957. At that time, I was a part-time employee at Merrill, Lynch, Pierce, Fenner and Smith.

In 1959, on my graduation, or shortly before my graduation, I was transferred to the research department at Merrill Lynch, where, at the time that I left in 1962, I was a public utilities analyst.

Since then, I have been employed at Oscar Gruss & Son as the director of research, which involves -- well, the firm itself specializes in investing in special-situation securities, and arbitrage type things, type transactions.

And my responsibility there is to investigate the various securities that are candidates for acquisition or purchase and the relative merits, and as to whether to hold them or not to hold them.

I am a member of the New York Society of Security Analysts. I am a Chartered Financial Analyst, and I am also a registered representative at the New York Stock Exchange.

I also attended New York University's Graduate School of Business, where I completed the course requirements for Master of Business Administration, but never got around to writing a thesis.

Q Mr. Anreder, in giving your opinions, in your position at Oscar Gruss & Son, will you please tell me how in the ordinary course of your business you go about obtaining such information?

A I am sorry, I can't hear you.

THE COURT: Do you want voir dire as to his expertise?

MR. CASH: No, your Honor.

Q Could you tell the Court, Mr. Anreder, how you go about obtaining information in your position at Oscar Gruss & Son?

A Well, in terms of -- generally you look at the company, the capitalization, the business, and the various

securities which they have and the prospects for them.

Q Could you also tell the Court how you became a chartered financial analyst, what you had to do?

A Becoming a chartered financial analyst is a matter of taking three consecutive yearly examinations, which examinations run about five hours and involve -- covering a number of various -- dealing with investment analysis.

Q Mr. Anreder, I wish to show you Plaintiffs' Exhibit 2 for identification.

Have you ever seen a copy of that document before?

THE COURT: He told us that this morning, didn't he?

MR. FUCHS: Yes.

Q This morning, you testified that you have seen a copy of that before. Could you tell the Court, please, to what extent you examined that document?

A Well, I read it through quite thoroughly, I studied it, I analyzed it, and I appraised various factors in it, and appraised the information which was included in it.

MR. FUCHS: At this time, I would like to mark for identification another prospectus entitled "Prospectus, Exchange Offer".

XXX (Plaintiffs' Exhibit No. 7 marked for identification.)

Q I show you this document marked No. 7 for identification. I ask you if you have ever seen a copy of that document before.

A Yes, I have.

Q Could you tell me generally what that document is.

A This is essentially the same document as the other one, except that the wraparound is different because it is the exchange offer as part of the recapitalization plan, the exchange offer to the bond holders.

Q Could you tell the Court, please, to what extent you have examined that document?

A Well, to the same extent as the other one. I mean, they are basically the same material in terms of statistical--

THE COURT: Let's get right to the bottom of it.

Did there come a time when somebody asked you to make an appraisal of the value of this preferred stock of Curtis?

A Yes, sir.

THE COURT: Who did that?

A Mr. Gruss.

THE COURT: When was it?

A Shortly after its receipt.

THE COURT: Would you please tell us what

documents you relied on in making your examination?

A Well, I relied on the proxy statement itself; I relied on the annual reports, which I had seen prior to that time. I had relied as far as my recollection was concerned, I did not study it in detail at the time, an exchange offer that was made to the same security holders of 1967, which was not actually completed.

And, I relied on various meetings and discussions I had with Mr. SerVaas, and at one time, a meeting I had with Mr. SerVaas and several members of the Board of Directors of Curtis Publishing.

MR. CASH: May it please the Court, this presents a problem with respect to this expert witness. If he is going to testify as to his opinion, he has now indicated that there were factors that went into the arrival of his conclusions, which are not in evidence in this trial, and I question now whether this witness, once he states that he has factors which are influencing his decision, which are not in evidence, whether he can be an expert witness any longer.

MR. FUCHS: Your Honor, I am talking now --

THE COURT: Let's not have extensive argument. The point raised has some validity. In order for the witness to give an opinion and for it to be meaningful, he must tell the Court what he bases his opinion on. Whether that comes

to him in the form of a traditional hypothetical question, which would be based on everything that is already in evidence, or whether he gives the Court the result of his investigation on which he relied, we must get the foundation for his opinion.

If it then appears that some portion of the information on which he bases his opinion is incorrect or unreliable, then the weight to which his opinion is entitled will be minimized.

But, if this witness tells me that one of the factors I based my opinion on is that, on a certain date at a certain time and place, Mr. SerVaas told me such and such, I would permit him to testify to that effect. That is what an expert does: He assembles a lot of hearsay data and then gives his opinion.

MR. CASH: That is true, your Honor, except it gets a little more complex in this kind of situation. If, for example, he testifies that part of his decision-making process was dependent upon certain statements made by Mr. SerVaas, and if those statements are in evidence, I would say he can rely upon them.

On the other hand, especially with this question with the exchange offer, I have never seen the exchange offer. I think I am sufficiently biased in this particular

respect, if this witness is going to make some comparison with documents or figures which have never been introduced in evidence here, then I say that from the very start this witness disqualifies himself.

THE COURT: I don't think so, but I will not take his opinion unless he tells us, with sufficient clarity so that the defendant can meet the issues, what data he assembled, where he got it from, and that he relied on in giving his opinion.

If the data is some personal investigation he made while interviewing Mr. SerVaas, then he must give us the time and place and who was present and the substance of what he said.

Then, if he based his opinion on something which Mr. SerVaas told him, I will take it.

MR. CASH: Your Honor, there is one other further observation that must be made in this particular kind of case: This witness isn't being asked to give a general observation as to his appraisal -- his opinion on appraisal. It is a little more specific than that. He is being asked to give his opinion as to appraisal as an expert on a particular date in time, as required by the statute.

THE COURT: Yes.

MR. CASH: And the facts upon which he relies have

to be even pinpointed with a lot more clarity than just a generalization, especially with respect to a prior exchange offer that took place, you know, a significant period of time before the date in question.

THE COURT: That is a proper area for inquiry on cross examination. I want to find out what he relied on, what the source was of the information he relied on, and then I will take his opinion, and you may cross examine.

If the things he relied on aren't adequately supported in the record, then his opinion is entitled to less weight than it would have otherwise.

All right, let's get right down to it. Go ahead and frame another question.

MR. FUCHS: I would like to introduce this document into evidence that has been marked for identification as No. 7, that the witness has stated that he has relied upon.

MR. CASH: I have no objection to that.

THE COURT: Received in evidence, no objection.

XXX (Plaintiffs' Exhibit No. 7 was received in evidence.)

Q Mr. Anreder, were you requested to provide an opinion as to the fair value of the preferred stock at any specific period of time?

MR. CASH: Excuse me. Let the record indicate

that that is the $4.00 preferred stock.

THE COURT: Yes, $4.00 dividend series preferred stock.

Q Were you asked to provide an opinion as to the fair value of the $4.00 dividend preferred stock issued by Curtis as at a particular period in time, as of that particular time?

A Yes, I was.

Q Could you please tell the Court what time that was as at?

A Well, for the purposes of preparing this trial, that was several weeks ago, I guess, at least.

Q No, but were you asked to evaluate what the fair value of the $4.00 preferred stock was at any particular time -- what its value was at any particular time?

THE COURT: The valuation date is what he is asking for.

MR. FUCHS: That is correct.

A Yes, again.

Q Can you tell the Court what that evaluation date was?

A The evaluation date would be the date prior to the shareholders meeting, which would be September 13, the day before.

THE COURT: What page is the Pennsylvania statute on?

A I think it is on page --

MR. CASH: It is on page 92, your Honor.

A The Pennsylvania statute is in the back, I am sorry. It is in the back.

Q Mr. Anreder, could you please give a general statement of the approach that you took in obtaining this opinion.

THE COURT: Can you fix the date correctly here?

MR. FUCHS: Your Honor, I believe he testified that the valuation date is September 13, which is the day before the shareholders meeting, which is what is specified in the statute.

MR. CASH: I consent to the fact, your Honor, that the date in question is September 13, 1972.

THE COURT: All right.

A I am sorry. I did not hear the question.

(Question read.)

A Yes. The approach is that for a company such as Curtis, which is one that had experienced some severe financial difficulties, that ultimately the derivation of any value for any of the securities of Curtis Publishing would come out of the common stock, and the market value of the

common stock would be the basis upon which you can determine the worth of the other securities.

Q Mr. Anreder, could you please tell me why you looked at the common stock value in determining the value of the other securities, rather than the value of such other securities themselves?

A Well, as a general rule, in my experience, the investing public, especially in companies that have had financial difficulties, doesn't really understand the senior securities and the rights and preferences to which they are entitled, and, as a result, the market price of those securities is not really indicative of what their value may be.

The public looks for the speculative value in any situation in terms -- into the common stock.

MR. CASH: Your Honor, I object to the manner in which he characterizes how the public reacts. I don't mind if a witness testifies as to how certain things occurred at a particular time, in a sort of mathematical, but this is strictly hearsay and very broad.

THE COURT: I don't think it is hearsay. I take it the witness, when he talks about the public, is really talking about the securities market, which I suppose reflects the opinion of the public, the meeting of the minds of the buyers and sellers. So that I think the answer may stand.

But, I would really prefer, Mr. Fuchs, if you would ask him to tell us those matters which he considered or read or learned of or relied upon in connection with making his study. When you have all those matters laid out, then ask him what he did in preparing his study.

Q Mr. Anreder, can you please tell the Court what you viewed and what you relied upon in reaching your opinion that the public does not understand senior securities --

THE COURT: No, no. The value of the stock. What did he look at as to the value of the stock.

What facts did you take into consideration in forming your opinion?

A Well, I took into consideration the market price and the market prices of the common stock over a period of time.

I took into consideration the rights and preferences of the other classes of securities and how they should be treated in a plan that would be equitable to them as well as to the common stock.

Q Did you also, in basing your opinion that you cannot -- you stated beforehand that it is your opinion that the public does not understand senior securities and that, therefore, the market price of such senior securities is not indicative of the true worth.

Can you please tell the Court how you reached such an understanding of the way senior securities react in the market place?

A Well, I have been in the special situation business now for twelve years, and over that period of time I have run across any number of situations where blatantly there is a disparity in the market place which exists over a long drawn out period of time that shows that the senior securities sometimes -- very often don't get the proper weight to which they are entitled.

For instance, if you look in the current market now, you have Penn Central Holding Company common stock selling at a dollar and a half, and the bonds of the railroad company are selling at seven dollars, which is, you know, it doesn't make sense. Because before the common can get anything, the bonds would have to be paid off very close to, if not in full.

And, as a matter of fact, as an aside to that, I think it was within the last year, the Internal Revenue Service ruled that the unsecured creditors of the Penn Central could write off their claim, which would indicate that the I.R.S. doesn't think there is very much left to the common stock.

MR. CASH: I object to the last.

THE COURT: I listened to nothing but Penn Central

for a month, so one more day won't hurt.

Are these convertible securities you are talking about?

A No, sir. These are first mortgage bonds I am talking about.

THE COURT: Let's get back to Curtis. Are these convertible?

A No. The preferreds -- the bond, I believe, may be --

THE COURT: We are talking about a $4.00 preference; isn't that what we are talking about?

A That is not convertible.

THE COURT: Not convertible. What is it, redeemable?

A Redeemable at sixty-five dollars in a voluntary liquidation.

THE COURT: Is it redeemable in the absence or callable?

A Yes, it is callable at sixty-five dollars.

THE COURT: Let's stick with Curtis shares, if you don't mind.

Q Mr. Anreder, would you please tell the Court whether in your opinion there was anything to indicate that this phenomenon of preferred securities selling at something other

than what the real worth was, whether there was any indication that this was true with respect to the $4.00 preferred shares of Curtis, as at September 13, 1972?

MR. CASH: Excuse me, your Honor, the manner in which counsel is asking these questions is awfully leading.

THE COURT: It is leading, but, you see, I had asked counsel to ascertain from this witness all those items which he considered and relied upon as relevant in reaching a conclusion as to value.

I assume, sooner or later, the witness is going to tell us that on September 13, 1972, these shares were worth so many dollars a share, fair value.

MR. FUCHS: That is correct.

THE COURT: Let's bring him right up to that and let him tell us all of the facts or assumptions or underlying data on which he relied. Because his opinion without a basis is of no help to the Court and not very amenable to cross examination, either.

MR. FUCHS: Your Honor, if he will answer this question, then I will ask him.

THE COURT: All right. There is no jury here, but let's get down to the case.

MR. FUCHS: Could you repeat the question?

THE COURT: Frame a new question. You may ask the

same question if you like.

Q Mr. Anreder, as at September 13, 1972, was there any indication to you that this phenomenon of having senior securities sell at a price that was not indicative of the value, was there any indication to you that such a phenomenon was present with the $4.00 preferred stock of Curtis?

A The obvious answer to that is that the company had proposed a plan of reorganization under which the preferred shareholders in the recapitalized company would get 1.54 shares of the recapitalized company's shares, which were worth -- which, before the recapitalization, was equivalent to 15.4 shares of the old Curtis Publishing common stock, and the market value of those shares, of the shares which would have been issued for 1.45 shares of Curtis at that time, was worth $4.80, and the Curtis preferred was selling at three dollars.

THE COURT: In other words, there was a possibility of arbitrage if the person doing the arbitrage transaction knew that the merger was going to go through, or the reorganization was going to go through.

A Yes.

Q Mr. Anreder, in reaching a valuation of the $4.00 preferred stock, can you please tell the Court whether or not you looked at any specific information and specific facts

in coming to a final figure?

A The figures that I used in determining what I would suggest as a proper plan of recapitalization --

THE COURT: No, no. We are talking about fair value, please.

A I am sorry -- the proper fair value for the preferred, for the $4.00 preferred, were primarily the figures that were included in the proxy statement and the exchange offer, and also relied on the information included in there, in terms of the rights and privileges of the bonds and the preferred stocks.

THE COURT: Anything else that you relied on?

A Maybe subconsciously, but, basically, no.

Q Mr. Anreder, you testified --

A Well, if I could amend that, in the back of my mind, in my experience, I had certain criteria which I think represented fair concepts which are part of the establishment of that value.

Q Mr. Anreder, you testified that the true indicator of fair value for any of these securities, in a case such as Curtis, would be the market value of its common stock.

Can you tell me why you picked market value as opposed to any other indicator of value of common stock?

A Because, basically, in any company the hope for the

future of the company rests in the common stock and that is reflected in the market price of it. And it is difficult to put a handle on anything else in the company, because they are subject to distortions which have no basis in fact.

Q Mr. Anreder, I draw your attention to page 37 of this document, which is marked as Plaintiffs' Exhibit No. 2, and show you on page 37 the category entitled "Property," and, particularly, the second paragraph thereof.

I ask you to read that paragraph.

A Read it aloud?

Q No, not aloud. Just read it to yourself.

After you have done so, would you please read it aloud?

A I beg your pardon?

Q Now, would you please read it aloud?

A It says,"The company, under a royalty agreement dated December 14, 1965 with a former subsidiary, which was sold to Texas Gulf Sulphur Company that year, has the right to receive certain royalties at such times as minerals are produced from certain tracts near Timmins, Ontario, Canada, which tracts remain undeveloped and as to which there is no present accurate basis for valuation. Texas Gulf Sulphur Company has indicated that it will not undertake development of the tracts until the royalty agreement is renegotiated so

as to reduce the company's royalty interest."

Q Mr. Anreder, would you say that the statement pertaining to the mining rights, as you just read, would have any bearing upon the speculative assets of the company?

MR. CASH: Your Honor, may it please the Court, this witness has been qualified as an expert in securities. It appears that counsel is moving towards some valuation of a particular asset in this corporation dealing with mining rights.

MR. FUCHS: Your Honor --

MR. CASH: May I finish?

As this witness has not been qualified as an expert in the valuation of mining rights, I respectfully object to any testimony that he may give with respect to this.

MR. FUCHS: Your Honor, I think --

THE COURT: Wait a minute. Let's not have any argument. I am going to overrule the objection. However, I am making a final direction to you, Mr. Fuchs: You are to establish all those things that this witness relied on and considered relevant in the course of reaching his opinion. And, once you have done that, the door is closed, and I don't want to hear him bring in anything else. He is to tell us what he considered and relied on as relevant in reaching a value. Let's get to that.

If he relied on some report, I will let him tell about it.

MR. FUCHS: May he answer this question, and I will try --

THE COURT: Frame a new question. I want you to cover what he relied on in reaching his conclusion.

Q Could you tell the Court, Mr. Anreder, when you refer to market price, what market price specifically did you rely upon?

A Well, the market price that I relied upon primarily was the price of the common stock.

Q At what time?

A For the appraisal date September 13, 1972.

Q Did you rely upon any other market price figures for any determination as to evaluating how many shares of common stock could be equated to the $4.00 preferred stock?

A Yes, of course. You know, you have to look -- to frame a value for the $4.00 preferred, it involves going back and looking at all the securities of the company and what would be an equitable disposition of the recapitalized company, and, you know, a more relevant value in my opinion would be the market price of the common over a period of time, obviously.

Q So then you relied upon market price at the time,

over a period of time?

A I considered various average periods for the value of that stock.

Q Would you please tell the Court what periods of time you considered?

A Well, I considered, first off, a three -- well, an average of the high and low price of the common stock for four quarters ending June '72, back to June of '71, and then I went back to the beginning of the year 1971. Then, I went all the way back, from there on, in yearly spurts, figuring the average price based on the high and low for each quarter, as it provided in the proxy material, back to '68, -- to the second quarter of '68, I should say.

Q Mr. Anreder, I asked you the question before that I don't believe you answered:

I asked you whether or not -- what effect the statement pertaining to the Timmins mining right that you read in the proxy material, what effect that would have on the speculative assets, the value of the speculative assets of the company.

A Well, it would certainly have an effect, because it -- and I guess we are getting back to the era I said subconsciously, I had long experience of knowledge in the Curtis Publishing Company, and I know that the Timmins properties

were at one time considered as worth a considerable amount of money. They sold them for a significant amount, I forget how much, and they also retained the overriding royalty interests in them.

And there was still--expecially if it was mentioned in the proxy, there still had to be a residual value, which was probably reflected in the market price of the common. How much it is, you know, nobody can really measure.

Q Mr. Anreder, you said that you referred to the market value of the common stock at the valuation date in making your valuation. Could you please tell the Court how you equated common stock to the $4.00 preferred in question, if you were looking at the market price of the common stock? How did you know how many shares of $4.00 preferred to common stock would be worth?

A I am sorry, I did not get the end of that question.

Q Could you please tell the Court how you equated the common stock and the market price of the common stock to the $4.00 preferred shares that are in question here?

A You mean in terms of the dollar value?

Q No, in terms --

A Or in terms of how I appraised what the $4.00 preferred should have gotten?

Q That is correct, yes.

A Well, to appraise what the $4.00 preferred should have gotten, in my mind I had to recast the entire recapitalization plan which the company provided. I think that the company's plan, which was pretty well spelled out in the proxy --

MR. CASH: Your Honor, may I interrupt for a second?

THE COURT: I think he ought to finish his answer, but I may have to strike it out.

MR. CASH: There is a reason why I think at this particular time, because of the way the testimony has been coming in, there appears to be a great deal of testimony being given which this witness indicates he is drawing a particular opinion from the convertibility factor.

THE COURT: Don't you understand, you will have an opportunity to cross examine him.

MR. CASH: No, no.

THE COURT: I will let him answer it.

MR. CASH: I would like a ruling as to whether he is permitted at this particular time to answer, because of the way the statute is stated. If the statute says that it has to be without regard to any depreciation or appreciation with the consequence of the plan, I wonder whether this whole

convertibility question can be gone into.

THE COURT: I will take it, subject to connection, but I am instructing you, Mr. Fuchs, for the last time, you must give me all the bases upon which you relied in reaching its value. Once you have done that, the door is closed on this matter.

MR. FUCHS: Your Honor, may I say this, that he is --

THE COURT: No more questions until you do that.

MR. FUCHS: He is not referring to --

THE COURT: No speeches, please. I will let the witness finish his answer.

Q Please proceed.

A Well, what I was going to say was, I was not -- well, I was not relying on the company's plan of recapitalization to determine the value of the preferred, which I came up with. I took an entirely different tack, and I used the same securities involved and the same -- or, at least, the price of the common stock is about the only connection that I have with the plan that the company put out, because I didn't think the plan put out by the company was worth anything in terms of fairness.

THE COURT: Are you assuming that the company, if they did not put out this plan, would have had to put out

another plan? Will you answer that yes or no.

A The answer would be no, they did not have to put out another plan -- at that time. Let's put it that way.

THE COURT: All right. Please proceed and make the inquiry that I have suggested to you, Mr. Fuchs.

MR. FUCHS: Your Honor, may I explain something, please, if you bear with me.

THE COURT: You see, this argument may be suggestive to the witness as to what lines his answer should take and that is unfair to him.

MR. FUCHS: If you wish, may I go into chambers with you and explain something.

THE COURT: I will let the witness step out of the courtroom.

Please escort the witness to the witness room, Mr. Clerk.

(Witness temporarily excused.)

MR. FUCHS: Your Honor, if I may, this witness, in his opinion, has stated that the only way he can come up with a valuation of the preferred stock is by not looking at anything except the market price. And, in market price, the only market price he can look at is common stock. Once he is left, your Ho[illegible], with a valuation of the common stock, he must come up with his own plan in order to equate common

shares to the $4.00 preferred, having nothing to do with the plan that was proposed by Curtis. But, if he comes up with that, okay, each share of common stock is worth X dollars because of its market value, and he says that is the only thing he can look at, then he has to look at the company, at the relative rights of the different securities in the company and say, "Well, okay, how many shares of [illegible] are equivalent to one share of preferred stock?"

That is what I am trying to elicit from him at this point. I am not going back to the plan. I am not having him have the value of the preferred stock affected by any plan. I am simply having him draw an analysis of an equation whereby, looking at some standard, that is, the market price of the common stock, he can equate, well, how much is the preferred stock worth, and this is what I am drawing out.

I think, if it is understood, his testimony will make more sense to you, and I think it is a valid approach and the only one you can take in a situation where you have preferred stock where market value doesn't mean anything and a company, with assets, which doesn't mean anything, and you have to look at it if it is an on-going company and all aspects of it.

MR. CASH: Your Honor, I object to this statement

of counsel. It is true that this is not a matter of the record, and it is true that we are sitting without a jury, but I think it is incumbent upon counsel not to plead facts or theories that should be coming out of the mouth of the expert witness.

THE COURT: That is why I excused the witness from the courtroom, Mr. Cash.

MR. FUCHS: The witness, your Honor, is just going to give you the facts. But when objections are made that he is looking at how the value was affected by the recapitalization plan of Curtis -- and that is not what he is doing at all --

THE COURT: Please, let's get down to earth here for a moment. You have a very capable and competent analyst here on the stand, as far as I can determine. He has just told me under oath that there was no necessity for them to have any plan.

MR. FUCHS: Your Honor, he said there is no necessity for the company to have a plan to be maintained. But, in order for him to arrive at a valuation in his own mind, he has to structure some plan that would equate the common stock to the preferred stock so that he can come up with what the value of the preferred stock is.

THE COURT: He has no evidentiary basis

to structure any plan, unless he is willing to testify, as the man is clearly not willing to testify because he has answered the question already, if he were to testify that this company must, for practical reasons within the next foreseeable few months, enact some sort of a plan but not this plan, then perhaps he can assume his plan and hypothesize its value on the plan. But, he doesn't say that, and I really don't see how he could say it.

So, then, you are left with a security which has preference rights on liquidation, which has cumulative dividends, as I understand it, and which is not convertible into the common stock.

So that he will have to value it according to the likelihood of continued dividend payments, according to the likelihood that the principal will be protected on dissolution, and according to the yield in the money market. He has a preferred stock here with no conversion features, as I understand it. Isn't that so?

MR. CASH: That is right.

MR. FUCHS: Your Honor, the cumulative dividends which were owed on this preferred stock, in accordance with the prospectus itself, were very high.

THE COURT: Tell us about that. But he cannot hypothesize a plan of his own based on the testimony he has

already given here. He can value the security. If it was publicly traded, he can tell us what the price ranges were. If he thinks the price range was too low, he can tell us what factors ought to be considered in adjusting that price range.

But, I can't have him on this present foundation hypothesizing a more equitable plan. Because he has conceded to me, and I think it is quite clear, they did not have to have a plan at all. Besides, other people dominating the company wanted to have a plan, and they cooked up a plan, and the dissenting shareholders don't have to participate in the plan. They can take their appraisal rights, which give them the value of their security, without regard to the plan.

MR. FUCHS: Your Honor, he has already said that if you look at the market price of the preferred stock, it was meaningless. That a true --

THE COURT: It is not meaningless. It is one of the factors, isn't it?

MR. FUCHS: But he has testified why this factor is a factor that has to be given very little weight.

THE COURT: I will take that testimony.

MR. FUCHS: And, therefore, he is looking at a market price which can be given weight, that is as to what the basic securities of the company are selling at, that is,

the common stock, and then he is going to come up and explain, well, how many shares of common stock would the preferred stock be worth.

THE COURT: I can't take that line of proof. It is not competent evidence of the value for the purposes of this proceeding. It really isn't. And you are wasting time taking it, based on the absence of a proper foundation that would make it competent evidence.

If you want to go into him with the value, with the cost of money, with the yield, with the likelihood of getting the accumulated dividends on the liquidation -- I would take all that. But, as far as his hypothesizing a different plan of reorganization and assuming it would be adopted in the foreseeable future, there is no competent foundation to show that here.

MR. FUCHS: Your Honor, if that is your ruling, may I then ask for an adjournment until tomorrow morning, because the line of expert witness is along this line, and this would have to be discussed with him as to what the -- what other factors he would use in his valuation.

THE COURT: Did you give a written appraisal to your adversaries here?

MR. FUCHS: I am sorry. What was that, your Honor?

THE COURT: Did you serve your adversaries with a

written appraisal?

MR. FUCHS: No, we did not, they didn't serve us with an appraisal, and I don't believe this was a requirement.

THE COURT: I will say this to you. I am inclined in the interests of saving time and not embarrassing this witness to accede to that. But, tomorrow, I want it to come in fast, I want my rulings strictly adhered to, and I don't want any indication in tomorrow's testimony of this witness that anything in our colloquy or discussion here or any of the objections made by your adversary have suggested to this man any different thing.

You see? I don't want him to come down and attempt to withdraw from the position he has taken on this record.

MR. FUCHS: Your Honor, I don't believe he will attempt to withdraw. I certainly would not have him withdraw.

THE COURT: That is why I excused him from the room.

MR. FUCHS: Right. The only thing I will tell him, if I may. I will tell him that the Judge does not accept as competent evidence the theory that he was utilizing, that is, to make his own plan of recapitalization.

THE COURT: That is right. He has to give us the true worth of this stock, this preferred stock.

MR. FUCHS: So, I can tell him of your ruling.

THE COURT: Yes, certainly -- based on all the relevant factors, which would be its liquidation rights, its yield, the foreseeable likelihood that the cumulative dividends will be repaid, foreseeable future of the company, whether it can stay in business. All of those things he has to consider. There may be more. I am not giving you an exclusive set of criteria.

Do you want to say anything, Mr. Cash?

MR. CASH: Not at this particular time, your Honor.

THE COURT: All right. I am going to hold them to the same standard with their expert.

MR. FUCHS: Your Honor, if I may, just for the record, may I again, with all due respect, take exception to your ruling.

THE COURT: The statute gives you an exception.

MR. FUCHS: Thank you.

THE COURT: And you have it. You can make an offer of proof. If you want to state your offer of proof on the record in dollars, that might be worthwhile. So, why don't you give me an offer of proof.

MR. FUCHS: Can I have the witness just state what

his final conclusion is.

THE COURT: Don't you know what it is?

MR. FUCHS: It is approximately $200,000 for the 12,560 shares.

THE COURT: Does he have a document or something?

MR. FUCHS: Well, what he did, your Honor, is --

THE COURT: Did he make a schedule where he worked out his prices on it?

MR. FUCHS: Yes. What he did, he worked out a situation where, first, he took the market value of the common stock, worked out his own plan of recapitalization to ascertain how many shares of common stock were equivalent to each preferred stock, multiplied the two together, and came out with a figure of approximately $200,000.

THE COURT: Mark that document for identification and I will treat that as an offer of proof.

MR. FUCHS: All right.

THE COURT: Show it to your adversary. Mark it for identification. That is what he would testify if he were asked.

I don't want any suggestive discussion in his presence.

MR. CASH: Am I to understand that upon the return of this witness tomorrow, that if the offer of proof doesn't

hold and is not acceptable by the Court --

THE COURT: I am not accepting it. I am just helping counsel protect his record here, that is all.

MR. CASH: Will the witness be permitted to then testify as to other factors which today, obviously, were not used in the calculation but as an afterthought, because he failed to come up with a theory, he goes back and finds another theory?

THE COURT: I think if this man is here as an expert witness who can appraise this stock, and if he proceeds in accordance with a competent basis, which he has already told us in effect, and doesn't bring us in some hypothetical recapitalization on which he is relying and which he does not testify is, in blunt language, in the cards, if he had a proper foundation and he came in and told us it is quite clear to him if this capitalization had not been enacted they would have to do it in such and such a fashion for reasons of practicality within the foreseeable few months after this valuation date, and the market would have known that and taken that into consideration, it might have been competent.

But, you see, any such line of testimony would be unbelievable under the circumstances.

But I would permit him tomorrow to take into

consideration the security of the investment, the future prospects of the company, the likelihood of recouping the cumulative unpaid dividends -- anything that a willing buyer of stock would consider as of September 13, 1972.

If I have left something out, each of you are welcome to remind me, but I don't think it can be more clear than that.

MR. CASH: So that there is no confusion, your Honor, I wouldn't want the other side to state some surprise, I suggest that under the case law, both in the state of Pennsylvania and as used locally here, in addition to the market value as being an important element in the determination of value, I think it is very important than the whole price earnings -- the dividends that have been paid, and all the other factors that go into this as an investment, pursuant to the cases that exist in New York, should be complied with and not a theory which --

THE COURT: He said he did rely on those things. They are all either in the proxy statement, aren't they, or in the exchange offer prospectus?

MR. CASH: Yes, but then he goes on to say that he has a theory which deals strictly with --

THE COURT: His theory is incompetent, and I have so ruled and I am preserving Mr. Fuchs's rights so you will

have an offer of proof.

MR. CASH: Thank you.

THE COURT: But he can appraise this security using all of the recognized criteria. And I will let him start with that in the morning. But, let's get ready, get it accomplished quickly.

MR. FUCHS: Your Honor, will that document be just marked for identification?

THE COURT: Yes, certainly, to preserve your rights in the event you want to review the ruling.

Please bring in the witness.

You see, it is perfectly possible for a security of this type to be undervalued in the market. The market price is not controlling in this case. But, he has to show a sound basis for an opinion if he claims it is.

J U L I U S A N R E D E R, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. FUCHS:

Q Mr. Anreder, do you have a document with you that you utilized in preparing your final figures as to the valuation of the $4.00 preferred stock?

A Yes, I do.

Q May I see it, please.

A It is my only copy.

THE COURT: Mark it for identification.

MR. FUCHS: I now ask that this be marked for identification.

XXX (Plaintiffs' Exhibit 8 marked for identification.)

MR. FUCHS: May I request the Court that this document be left in my custody overnight in case there has to be any reference made to it?

THE COURT: Oh, yes, certainly. I am not taking it. I am only marking it so that you can have a complete record.

MR. CASH: Your Honor, is it possible for counsel to furnish me with a copy of this, before tomorrow morning?

THE COURT: There is a machine in this building. Why don't you go together and, we will break earlier, get it Xeroxed.

MR. CASH: Thank you very much.

THE COURT: But, I am not receiving it in evidence, assuming there is an objection.

Are you objecting to it?

MR. CASH: I don't know yet.

THE COURT: Do you object to it?

MR. CASH: I would have to object to it.

THE COURT: All right. It is based on this

hypothetical recapitalization, isn't it?

MR. CASH: That is it.

THE COURT: Hand it up here.

You see, he has done a nice job, but the objection is sustained.

Another thing, while we are all here, to save your time and save surprises: The Court is puzzled by the meaning of the word "Blue" up here on top of Exhibit A, and if you are relying on this exhibit in any regard, I am going to want to know what the evidence is as to whose handwriting is on it and, if possible, who signed it. The exhibit is in somewhat of a confused state.

MR. CASH: Your Honor, as to allocations, the numbers that appear on there, I did not submit it in evidence for those statements; I submitted it in evidence for the card itself, for the statement that is stated thereon by the stamp Oscar Gruss & Son, 80 Pine Street, New York, and for the signature, or the alleged signature. I put it into evidence for no other reason or for any other notation that may appear on that document.

THE COURT: Please understand that we had a witness say that that is not the signature of Oscar Gruss & Son.

MR. CASH: That is true, your Honor, but it was stipulated by counsel for both parties that this was being

put into evidence merely to show that this was found in the books and records of Curtis as part of the reorganization procedure, and the solicitation of document of proxies, and that it was being put in evidence as though I had brought somebody up to put it in evidence, to show that this proxy had been received by Curtis and had been used in the tally of the positive votes.

THE COURT: But you are asking me to infer from that bare concession that the proxy is -- and it may well be, but I am wondering whether our record is complete enough -- that the proxy is genuine and valid, and, also, I suppose you are asking me to infer that it was received by Curtis on September 13. You don't say that, but it has a date stamp there, which I would suspect is that of Curtis.

MR. CASH: Yes, that is correct.

MR. FUCHS: Your Honor, may I say something.

First of all, we did not stipulate that this was received. We did stipulate that this was obtained by Curtis on August 12.

THE COURT: You see, the stipulation is fine, but the weight to be attached to the document is a question for the trier of the facts. And, right now, the record is in a balanced state here. You will have to clarify it. Anyone who is relying on that paper --

MR. FUCHS: We are not relying on that paper, your Honor. As a matter of fact, we reserved all objections.

MR. CASH: It is the same as if I had brought somebody from Curtis, which I wanted to avoid, to show that this was found in the books and records of Curtis.

THE COURT: No one knows what the word "Blue" means?

MR. CASH: I can find out what the word "Blue" means, but I don't myself know what the word "Blue" means.

THE COURT: Or whose handwriting that is?

MR. CASH: No.

THE COURT: All right, gentlemen. It is your case. It is an adversary proceeding. You have to try it yourselves.

MR. FUCHS: Thank you.

THE COURT: Ten-thirty tomorrow, gentlemen. Be ready to go right ahead.

(Adjourned to 10:30 A.M., Friday, October 11, 1974.)

OSCAR GRUSS AND OSCAR GRUSS & SON

vs. 73 Civ. 282

THE CURTIS PUBLISHING COMPANY

October 11, 1974
10:30 a.m.

THE COURT: Are you gentlemen ready to proceed with respect to Gruss against Curtis?

MR. FUCHS: Yes, your Honor.

Your Honor, I would like to start with an application to the Court as follows.

Of course, yesterday there was an important ruling -- at least we consider it that -- which came from the Court pertaining to what type of expert evidence would be relevant pertaining to the valuation issue from the plaintiff.

We believe that, with all due respect, as I said, your Honor, this is an erroneous ruling. Because it is so vital, I would ask that you consider permitting the plaintiff to reargue that motion that led to that ruling, and to permit us to provide cases to you, either in brief form or after a considered careful examination of all the cases, if you would rather have it in oral form.

I believe, your Honor, that if we can show you cases pertaining to different valuations under different circumstances, you will see that this is the type of approach

that is often taken, and you might have a different thought on it than you had yesterday on a sort of off-the-cuff argument, which was all that we were able to give then.

THE COURT: Maybe you don't perceive the problem in the same sense that I view it.

I made every effort yesterday, Mr. Fuchs, to protect your record fully. I have marked for identification the man's working papers. But there is an essential difficulty here that I just don't believe could be circumvented. You cannot use a basis or procedure for valuation which assumes a future event for which you have no basis to make the assumption that the future event will take place in the foreseeable future.

The famous New York case, Barkill Realty, is a case in which anyone who has valued anything knows that in valuing a tangible asset or an intangible the same principles apply when you value real estate. He is an appraiser. He makes his assumption. He can tell the Court all the assumptions and underlying data on which he relies in reaching his opinion. But if he gives us an assumption which he himself says is unfounded, it is incompetent to base an opinion on that.

MR. FUCHS: Your Honor --

THE COURT: The assumption is a very simple one.

He has made the assumption that as of May 15, which I think we all agree was the date --

MR. CASH: Excuse me, your Honor, September 13.

MR. FUCHS: The valuation date is September 13.

MR. CASH: The valuation date is September 13, your Honor.

THE COURT: I am sorry, September 13, I beg your pardon.

That, as of that date, there was no reason to believe that in the immediate or even in the foreseeable future this corporation was going to implement any plan of reorganization. What this man wants to do is to assume what a fair and reasonable plan would be and then value his preferred stock with relation to the common stock in a reorganization plan. But there is no basis for assuming the coming into being of any such plan.

MR. FUCHS: Your Honor, I agree with you to the extent that, as the witness testified, there was no reason to assume such a plan would come into effect. But, your Honor, I don't believe that the witness would have based his testimony upon assuming something that happened that he had no right to assume would happen in the future. I think, rather --

THE COURT: That is the state of the record.

MR. FUCHS: Right. Your Honor, I think rather -- and if the state of the record is so, I would like to correct it -- what the witness was attempting to do was to utilize in his mind a tool, to plan in his mind a recapitalization, not with any assumption that it would occur and not with any thought that it would occur in the future for the purpose of trying to evaluate the stock, but just simply as a tool in his mind to show how the preferred stock could be equated to the common stock, which the common stock in the opinion of the witness --

THE COURT: It could only be equated to the common stock, the way he was testifying, if he assumes that at a future date, reasonably near the evaluation date he is using, the corporation will have a plan of reorganization of the sort that he contemplates as being fair and reasonable. Isn't that so?

MR. FUCHS: Your Honor, I don't think so, because I think that if you talk in terms of what the entire company is worth by virtue of its common stock, and try to evaluate what proper percentage of that common stock each of the various securities in the company should be entitled to, by virtue of the relative rights and privileges of each security, I don't think that you have to anticipate actually such a recapitalization occurred.

THE COURT: You can put in any evidence you like, and I will reserve decision as to its competency and relevancy until after the trial is over, if that is what you want to do. But I am trying to tell you that you can't base a valuation on an unfounded assumption, and anything that is based on an unfounded assumption is not going to have any weight or validity.

But you go ahead and you try your case, and I will take your case. I don't want to cut you off from offering anything. I have tried to give you a ruling that will guide you in your thinking and simplify your procedures here. You go ahead and examine the witness and you ask him anything you want.

Are you familiar with the theory of the Barkill case?

MR. FUCHS: I am sorry.

THE COURT: Are you familiar with the legal theory involved?

MR. FUCHS: Yes, I am.

THE COURT: The fact situations there were that they had a mountain and the mountain was condemned. And the owners presented a structured valuation based on the fact that they were going to turn the mountain into a quarry. After the quarry was opened, they were going to sell a

certain number of million yards of crushed stone, and the manufactured cost would be a certain amount. The whole idea of the quarry on this particular parcel was all a dream in the future. There was no showing that there was any tangible plan to open a quarry there in the foreseeable future at the time of the valuation date.

The courts, after about three different go-rounds on the thing, threw it out. They said you can't base your valuation on an assumption that something is going to occur, like opening a quarry, unless you have a basis for making that assumption on the valuation date.

He is making the assumption. He is assuming that a recapitalization plan or a plan of reorganization occurs. I won't argue with you further. Put in your evidence.

MR. FUCHS: Thank you very much.

J U L I U S A N R E D E R, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. FUCHS:

Q Mr. Anreder, at any time were you asked to provide your opinion as to the fair value of the $4.00 preferred stock on the valuation date by a means other than utilizing a recapitalization such as you began to discuss yesterday?

A Yes. I mean, I was asked to appraise the value of the $4.00 preferred several months ago, at least, and I

did consider other things before that, yes.

Q Had you come up with an opinion of the fair value of that stock on the valuation date without referring to any sort of a plan of recapitalization in your mind for doing so?

A Yes, I did.

Q Could you please tell me all of the factors that you considered in arriving at his opinion?

A Sure. One of the first things that I considered, obviously, was the market price of the common stock on the valuation date, which was 5/16ths, which is thirty-one and a quarter cents. Because, as I mentioned yesterday, the common stock, in my opinion, is the indicator of the speculative value of the company.

[illegible] was the market value of the $4.00 preferred, obviously. It was selling at $3.00 a share, and I thought that this put a very low value on the preferred shares, because in my opinion the fair value is substantially higher than that -- as a general principle, the fair value of senior securities is very often not reflected in its market price.

THE COURT: Was there some accrued dividend on this stock at the time of the valuation date?

A Yes, sir, there was.

THE COURT: How much was that?

A It was $30.75.

THE COURT: Thirty how much?

A $30.75.

And then I looked at the market price of the $4.00 preferred over various periods of time to get an indication as to how it has sold in the past, which gives you an indication of overall market behavior here. And I see that, you know, if you went back just a twelve-month period, around the time it was around $3.80 --

MR. CASH: Excuse me, your Honor. I thought that the witness is reading from a document.

THE COURT: Anything he is reading from is going to be marked for identification.

Mark it.

MR. FUCHS: Certainly. Please mark these two documents.

XXX (Plaintiffs' Exhibits No. 9 and 10 were marked for identification.)

THE COURT: All right, you may continue to refer to them.

A If you went back to a twelve-month period, it came out to around $3.80. If you went back to a year-and-a-half period, it was $4.65. And it went up consistently over a period as far back as you went.

THE COURT: What is this, now, the market price?

A This is preferred. This is average value of the preferred.

THE COURT: Average market price?

A Average market price, yes.

THE COURT: Do you have that in a table?

A Yes, I do. I hope you can read it. It is my handwriting, which is not too good.

And then another thing that I looked at was the market value at that time, and over a period of time, of the $1.60 preferred. Because in practically all respects the $1.60 preferred had the same rights and privileges, proportionately, as the $4.00 preferred.

On the valuation date, the $1.60 preferred was selling at 1-5/8ths, and over a period of time, the average price had ranged up from 2-1/4, if you extended it to around a twelve-month period, all the way back to $4.47, if you went back to 1968, in the third quarter.

And then I looked at the number of shares of both preferreds which were outstanding, of which there were 334,470 shares of the $3.00 preferred, and 239,418 shares of the $1.60 preferred, which I mentioned in passing before, that the rights of each preferred -- the $4.00 preferred was entitled to $3.00 in dividend plus a dollar contingent

dividend if it was earned; and the $1.60 preferred was entitled to $1.60 dividend plus a dollar contingent, if it was earned.

The cumulative dividend, as I mentioned before, was $30.75 on the $3.00 preferred, it was six dollars, and something on the $1.60 preferred.

The voluntary liquidation value, or the redemption value of the preferreds, were $65.00 for the $3.00 preferred and $25.00 for the $1.60 preferred.

THE COURT: Is the thirty dollars in that sixty-five?

A No, it is not.

And, as I mentioned before, from the information in the proxy material and the exchange offer, the preferreds were entitled to pro-rata treatment in all respects except one, that is, on contingent dividend, which was just going to be equally split if, as and when it was ever paid.

In addition to these factors, I looked at the earnings records and the balance sheets of the company, and one thing that I noted in the earning statement, which gave me a little bit of heart, was the fact that since the company had reintroduced The Saturday Evening Post in 1971 on a four-quarter basis, it had been carried from a start-up expense loss to about a breakeven point in the first quarter

of 1972.

As a matter of fact, if you look at the earnings statement of the company as put out there, if you disallow the interest charge for the bond interest, which was not being paid anyhow, the company was practically on a total break-even basis.

And I don't remember this specifically, but it seems to me there were indications that the company had indicated that they were going to increase the frequency of The Saturday Evening Post. When it was initially published, it was sold strictly over the counter on magazine and newsstands, and it had been a success to the extent that the company decided that they could begin to accept subscriptions on it. So that indicated to me that it had gotten off the ground pretty much.

And I also considered the fact that, well, going back to the balance sheet, that the current assets and the current liabilities were practically even. The company had no major liabilities except for the income bonds, which would indicate to me that the company could continue as a going concern, although, obviously, some sort of recapitalization was preferable to give them a lot more flexibility than they had.

The fact that Curtis was not in the position of

having the wolf at the door that they had to make the plan, that they could keep the company more or less going until The Saturday Evening Post took off. And this I read at some point in the proxy statement where it said that there were several alternatives to management to an immediate reorganization, and one of which was to just continue operating the company.

The other factor which I took into consideration was that in the company's proxy material they mentioned that there was no basis for valuing the mineral rights up in Timmins, Ontario, but 197 -- well, I had known from experience that there might have been a substantial value, a residual in that, and in fact, in the 1970 annual report of the company, it is stated that they now estimate the value at around two million dollars, and they have a report, which I guess was given to us from the company, Derry, Michener --

MR. CASH: Your Honor, I would move the striking of that portion of the testimony referring to the report, which is not in evidence.

THE COURT: If he considered the report in reaching his decision, I will let him tell us he did, and then if you want it produced and marked, I will have it produced and marked.

A Let me correct my statement. The Derry, Michener

report was mentioned in the 1973 annual report.

THE COURT: Well, he said he relied on the annual report.

THE WITNESS: I beg your pardon?

THE COURT: All right. Just answer the questions.

MR. CASH: The 1973 annual report is not in evidence, either, your Honor, and I was under the impression that this witness is being confined to his conclusions and his opinions based upon that which is in evidence.

MR. FUCHS: Your Honor, may I state two things --

THE COURT: Let's not get off on a tangent here, gentlemen. I will permit him to tell us anything that he based his opinion on, as of September 13. He can't rely on things subsequently.

MR. CASH: These matters are subsequent, your Honor.

THE COURT: Sir?

MR. CASH: These matters are subsequent; these reports are subsequent.

THE COURT: Yes, I understand. I will strike out any reference to the 1973 report or anything therein contained.

MR. FUCHS: Your Honor, if I might, the 1973 report refers to a valuation of the Timmins mining right which was

made later. The value of the Timmins mining right is an objective feature. If it had a value a year after the date, it is certainly some indication that it might have been somewhere near the same value the year before, and I don't think that it is completely irrelevant. And I think that when there is an annual --

THE COURT: What was this, an appraisal made by the company?

MR. FUCHS: That is correct, right.

THE COURT: I might take the appraisal, but I certainly won't take the 1973 shareholders report.

MR. CASH: Excuse me, your Honor. That was not an appraisal made by the company; it was an appraisal made by an independent, but I don't know whether in fact that was the true value.

THE COURT: If the company commissioned an appraisal and then used it in its annual report, I think that may be an admission against interest on the part of the company.

MR. FUCHS: That is correct.

THE WITNESS: Well, they estimated --

THE COURT: Don't volunteer information, please.

THE WITNESS: I was just answering --

THE COURT: Don't.

MR. FUCHS: May we proceed?

THE COURT: If you have the report, you may mark it.

MR. FUCHS: I have it. The reason I haven't put them in right now is that copies are annexed to the stipulation and I have reports now which I will ask him to identify.

THE COURT: Let's move along.

Q Please proceed.

A Do you want me to answer the question on the value of the Timmins in the annual report?

MR. FUCHS: I believe, your Honor, you are permitting him to continue where he received the information.

THE COURT: Has he told us everything he relied on now?

MR. FUCHS: He was discussing the Timmins mining rights.

THE COURT: All right.

MR. FUCHS: And I don't believe he has said everything that he has relied upon with regard to those rights.

Q Go ahead.

A The report indicated a value of between two million dollars to 4.4 million dollars for the Timmins, which for a

company with three million in total assets would be quite substantial.

(Interruption.)

THE COURT: You may resume.

A And then one last thing that I looked at at that time, the one thing that comes to mind is, that the company had submitted to Mr. Fuchs a report that was prepared in 1964, which mentioned at that time that in 1964 a value had been put on the Timmins property of $6.5 million.

Q Mr. Anreder --

A Another factor that I considered, that is going back to the ability of the company to continue as an on-going company, was the progress that had been made under Mr. SerVaas's leadership in terms of eliminating substantial tax liabilities, in settling some substantial litigation which the company had when he took over. And he cleaned up the balance sheet quite considerably.

Q Mr. Anreder, I show you here a copy of a document that purports to be an annual report of 1973.

MR. CASH: Excuse me, your Honor. May I make a statement with respect to the last li... of testimony that went in.

In this long description of what Mr. Anreder depended upon in coming to his conclusions, he testified as

to opinions dealing with the success of The Saturday Evening Post. I suggest that this witness has not been qualified as an expert in publishing who could evaluate the success or failure of magazines --

THE COURT: You may cross examine him as to the basis of any conclusion he has expressed concerning The Saturday Evening Post.

MR. CASH: Thank you very much, your Honor.

THE COURT: Or anything else for that matter.

Q Mr. Anreder, I show you a copy of a document which purports to be an annual report for 1973 from the Curtis Publishing Company, and I ask you to look at it at this time.

Mr. Anreder, is that a copy of the 1973 annual report that you just referred to in your testimony?

A Yes, sir.

MR. FUCHS: At this time, I would like to have that document marked and introduced into evidence as a plaintiffs' exhibit.

THE COURT: I will take only so much of that document as constitutes an admission of facts existing on or prior to September 13, 1972, because the rest of it, to the extent it gives operations for '73, is clearly telling us matters which couldn't be considered in making this appraisal. If the appraisal in there of the mining rights

was made prior to September 13, then it would be an admission.

MR. FUCHS: But, your Honor --

THE COURT: Read it so I don't know what is in it.

MR. FUCHS: Your Honor, if there is an appraisal which was made shortly after the valuation date, and that appraisal is adopted by Curtis as an admission of what they --

THE COURT: What is the date of the appraisal?

MR. FUCHS: The date of the appraisal is March 5, 1974.

THE COURT: That is awfully remote, isn't it? What minerals are up there?

MR. FUCHS: The thing is, in reading the appraisal, I think if they discuss matters that pertain to the type of property it is and the reputation of the property --

THE COURT: I will take it for what it is.

MR. FUCHS: At this point, your Honor, I am introducing into evidence from the plaintiff the annual report of 1973.

XXX (Plaintiffs' Exhibit 11 received in evidence.)

Q At this point, Mr. Anreder, I would like to show you a document that purports to be a report to the Curtis Publishing Company by Duncan R. Derry, Ph.D., and I ask you

to look at it at this time.

Mr. Anreder, is that a copy of the report by Mr. Derry that you were referring to in your testimony?

A Yes, it is.

MR. FUCHS: At this time I would like that introduced into evidence as a plaintiffs' exhibit this document that purports to be a report to Curtis Publishing Company by Duncan R. Derry.

MR. CASH: Your Honor, I object to the admission of this report. No proper foundation has been laid as to the preparation, who prepared it, and it is just on its face inadmissible in that respect. It is further inadmissible, as this was an appraisal made subsequent to the date in question.

THE COURT: What does the document show? What is it?

MR. FUCHS: The document shows a manner in which an expert looked at the land, and from the basis of the land, as opposed to any mining that was being carried on at the time, appraised the rights of the Curtis interest in that land.

THE COURT: Is it shown that this was commissioned by --

MR. FUCHS: We have stipulated, your Honor, if I

may explain, we have stipulated already that the 1973 annual report refers to a report. And we have also stipulated that a copy of this report is the report referred to, and that it was commissioned by Curtis Publishing for them.

XXX (Plaintiffs' Exhibit No. 12 marked for identification.)

MR. CASH: Your Honor, it is stipulated only that this was --

MR. FUCHS: I will read the stipulation.

THE COURT: One at a time, gentlemen.

MR. CASH: Your Honor, I stipulated to the fact that this was the report referred to in the annual report of 1973, but I did not waive any rights to object to it as to its admissibility at the time of trial.

THE COURT: You see, the defendant has informed its shareholders,and whoever else it may have filed its annual report with, that as of a March 1974 date this property had a value in a certain amount. Isn't that what the posture of the record is? That doesn't necessarily show the value of it in 1972.

MR. CASH: That is correct.

THE COURT: But it may be some evidence bearing upon such value, because the witness may have the opinion

that the value of mining properties doesn't change that much in a short period.

The Court can't assess that on the present record, because -- what page is it in the annual report?

A It is on page two or three.

THE COURT: We don't even know at this time what minerals are in there or whether the costs of extraction changed during the two-year period, or whether the market price of the minerals changed. But I will take it for what bearing it may have, for what weight it is entitled to.

MR. FUCHS: Your Honor, if I may just refer you also to the stipulation that I was referring to. This is the first stipulation we submitted. Paragraph 6: "Annexed hereto as Exhibit C is a true copy of the 1973 annual report issued by the defendant..." -- and a copy, of course, is annexed.

Paragraph 7 says: "The defendant represents that annexed to Exhibit D is a true copy of the report by Derry, Michener & Booth, referred to on page 2 of said 1973 annual report, which was prepared and delivered to the defendant upon the defendant's request."

THE COURT: But you understand, don't you, that the fact that it had a value of no less than two million dollars on April 5, 1974 really has very little weight in

aiding the expert or the Court to determine its value in September 1972.

MR. FUCHS: Your Honor, I realize that its weight would be more --

THE COURT: Or showed it had a mining claim which had some value.

MR. FUCHS: Your Honor, for whatever it is worth.

THE COURT: I will take it for what it is worth.

XXX (Plaintiffs' Exhibit No. 12 received in evidence.)

Q I show you a document, Mr. Anreder, that purports to be a document which states, "Report on Former Curtis Property, Timmins Area, Ontario, Canada, June 16, 1971," and I ask you to look at it at this time.

Mr. Anreder, is that the other document that you had referred to that mentioned a figure as a value of six million some-odd dollars therein?

A Yes, it is.

THE COURT: That was for the whole claim?

MR. FUCHS: No, your Honor, this says, "Curtis values properties that follow: 1964, 10 percent of Kidd Creek, 6,500,000," and the report discusses that the 10 percent interest is Curtis's.

THE COURT: That is the same interest that is

referred to as not less than two million dollars in the April 5th report of 1974?

MR. FUCHS: That is correct, your Honor, yes.

Your Honor, before I attempt to introduce this document into evidence, which I am about to proceed to do, I wish to advise you that this document was delivered to me in answer to an interrogatory. I will read the interrogatory and the answer and tell you that this document was delivered to me thereon.

An interrogatory to defendants, dated March 6, 1974, paragraph 10, states: "Set forth copies of all analyses received from Texas Gulf Sulphur Company or any other person or entity, pertaining to the mineral content of such tract, the value thereof, the development of such tract, and the extraction of such minerals therefrom, and the costs and time required for such development and extraction."

The answer to that paragraph is as follows:

"On May 17, 1974, there was delivered to attorneys for plaintiffs the report of Albert J. Grisser Company dated June 16, 1971."

And this document that was just referred to by the witness was delivered to me with that interrogatory. At this point I would like to introduce this document into evidence as an exhibit of the plaintiffs.

MR. CASH: Your Honor, I object to it. No proper foundation has been laid for this document. It does not constitute an admission, and it is also relative to matters occurring subsequent to the valuation date.

THE COURT: Subsequent? I thought he told me '71.

MR. FUCHS: The report is dated '71.

THE COURT: June 6, '71.

MR. FUCHS: And it refers to an admission in there of Curtis, where it states that Curtis values its investment rights at six million some-odd dollars.

MR. CASH: I am sorry --

THE COURT: Is the record clear that this is a report which Curtis had somebody prepare?

MR. CASH: I believe this is a report that was requested by Curtis at one particular time, and was found in our files. But as to the manner of preparation and who prepared it, as nobody has brought forward, I feel that it is not a valid document to be put into evidence in this particular case.

Your Honor, the fact that Curtis may have requested opinions from different sources does not necessarily mean that the opinion given by these sources became an admission of Curtis.

THE COURT: Not unless they adopt it.

MR. CASH: That is right.

THE COURT: If they put it in their annual report, and tell it to their shareholders, including this plaintiff, and tell it to the world, then they may be adopting it.

MR. CASH: That is correct, your Honor. There I would agree with you. But all the other documents that have been submitted have been submitted as being ordered by Curtis, requested by them, but not necessarily put into the annual report.

Therefore, I think within the limited scope that you are going to take it, the one dealing with the two million dollars is all that can really be admitted in this case.

MR. FUCHS: Your Honor, if I may point out one page to you in that document that I believe is an admission, and if you will take that document for no other purpose than that admission --

THE COURT: What is the page?

MR. FUCHS: May I approach the bench, your Honor, and point it out?

MR. CASH: Your Honor, may I point out to the Court --

THE COURT: What until he finds the page, and then I will come back to you, sir.

MR. FUCHS: Your Honor, if you will note, this talks in terms of a valuation placed thereon by Curtis in 1964.

THE COURT: The author of this report is apparently not an employee or officer or director of Curtis, so he has no illustrated standing to make admissions binding on Curtis.

What did Curtis do with this after they received it?

MR. CASH: Your Honor, may I --

THE COURT: Did they read the first page and stop right there? Is that what they did?

MR. CASH: Let me indicate to you by the prospectus itself, page 37, in dealing with this issue, obviously gives it no value, because it makes a statement with respect to no value on this. Therefore, it is not adopting these particular reports.

THE COURT: What page?

MR. CASH: This is page 37 of the Notice of Annual Meeting of Shareholders, which is already in evidence, under the category of "Property".

THE COURT: I will sustain the objection to Exhibit 13.

XXX (Plaintiffs' Exhibit No. 13 was marked

for identification.)

MR. FUCHS: Your Honor, could it be admitted as part of the office records kept in the normal course of business of Curtis, since it has been conceded and stipulated that this was found amongst business records?

THE COURT: You see, it may be genuine, I don't think anyone questions the genuineness of it. The only question is whether the conclusions expressed therein are binding upon Curtis in any way.

He is not disputing the authenticity of it. They went out, they paid for it, they had it done, and they filed it. But that doesn't necessarily make it an admission by Curtis that at or about that date Curtis valued the property as therein set forth.

MR. FUCHS: Your Honor, how about having it admitted on the basis that this was referred to by the witness in his expert testimony and have it as a document that illustrates exactly what the expert witness relied upon for a portion of his testimony?

MR. CASH: There, again, your Honor, I must object to the witness basing decisions and conclusions on matters which are not in evidence, as you have already ruled it should not be in evidence.

THE COURT: You see, a professional expert witness

when he values something, relies on hearsay. I keep returning to the analogy of the appraisal of real estate. A person who is appraising real estate goes outside and gets the feel of the market, he talks to the different people who have been selling, and he sees what the comparable prices are charged, and he goes and asks people, "Well, what did you pay for that building," and they tell him. A lot of that is hearsay. He puts it all together and comes up with his judgment.

You are entitled to know, in order to cross examine him, what he relied on. If it is something which is not public, it should be marked for identification so that it is available to the Court and to the opposing counsel.

But, as far as receiving it in evidence simply because he relied upon it, I wouldn't do that.

MR. CASH: Except, your Honor, I think there is one distinction that has to be observed here. That area which an expert uses as hearsay to arrive at his expertise I believe is one thing, because that is how a doctor or any professional eventually gets his expertise, by a long period of practice on patients, on clients, et cetera.

Taking that expertise and now matching it against some objective facts in order to come to a conclusion, I think requires him now to match that expertise which was

gained by hearsay against objective facts which are now in the record.

THE COURT: I am sustaining the objection to Exhibit 13. Let's proceed with the trial.

MR. FUCHS: May I have that exhibit marked, then, please, for identification?

THE COURT: It is marked. It is 13 for identification.

Objection sustained.

Q Mr. Anreder, previously you said one of the things you relied upon was financials of the company. Could you please tell me where you obtained such financial reports from?

A From the proxy statement and the annual reports.

Q Mr. Anreder, based upon these factors, what conclusions did you arrive at with respect to the fair value of the preferred stock, again not referring to any sort of plan of recapitalization that you had in mind?

A After considering all of these factors, and obviously thinking about -- well, after considering all of these factors, it is my view that the shares are worth fifteen dollars a share at the time of the recapital -- at the time prior to the recapitalization, which, if my arithmetic is correct, comes to about $188,000 for the 12,560 shares.

Q Mr. Anreder, yesterday I believe that you had testified that the market value of senior securities was not a true indicator --

THE COURT: Please don't summarize yesterday's testimony. Let's go to a new matter.

Q Mr. Anreder, would you say there is any relationship at all between the market value of senior securities and their fair value?

MR. CASH: This type of question is quite leading, your Honor.

THE COURT: It is not only leading, I really think it is repetitious and possibly even argumentative. The man has given us his appraisal here. Now let's go on to something else. Do you have any other questions for him?

MR. FUCHS: Yes.

Q Mr. Anreder, when did you reach the conclusion that you have provided for us today in relationship to arriving at the plan of recapitalization that you were attempting to discuss yesterday?

A I am sorry, I didn't understand the question.

THE COURT: I don't think it is relevant. This is his best opinion that he holds right now.

This is your opinion as of this moment, is it?

A Yes, sir.

THE COURT: Right?

A Yes, sir.

MR. FUCHS: I will withdraw that question, your Honor.

Q Mr. Anreder, yesterday you testified that there was --

THE COURT: No summary of yesterday's testimony.

Q Mr. Anreder, did you arrive at a hypothetical plan of recapitalization in order to equate the common shares to the preferred shares at any time?

A Yes, sir.

MR. CASH: I object, your Honor.

THE COURT: Sustained. Strike out the answer.

MR. FUCHS: Your Honor, if I may, I believe that--

THE COURT: Of course, I told Mr. Fuchs he could make his complete record here, but let's get on with it. I have already marked your plan for identification, haven't I, yesterday?

MR. FUCHS: Well, you marked the notes that Mr. Anreder had.

THE COURT: All right, let's bring it out as promptly as you can so you will have a complete record.

Q What is the answer, did you have?

A Yes.

Q Will you please describe to the Court such plan?

A Well, the plan involved, first of all, separating the company or separating two aspects of the company. One would be the company as it existed, and the other would be after Review and determining the capitalization, based on what the fair -- if you separate the two parts, you have got two pies, and how you should split up the one pie that would go to the security holders, the existing security holders of Curtis --

THE COURT: That is capital "R" for Review, that you are talking about. Review Magazine?

A Yes, Review Publishing, right, Review Publishing Company, that was going to be merged into Curtis, and then allocating the shares that would go to the former shareholders of Curtis in proportion to what their equities were.

The first premise that I adopted was the fact that, for a company that had experienced such financial difficulties and was just on the verge of a turnaround, that the common stockholders certainly were entitled to a stake in the company, but that it was -- but that the stake should be minimal for two reasons:

No. 1, that there were substantial equities above them which were going to have to be settled more or less for a fraction of their worth, for their claim; and, secondly,

that you had to give the shareholders enough to get them to vote the plan.

On that basis, and in my experience of other capitalizations or recapitalizations of that sort, I came to the conclusion that a ten percent of that share of the capitalization to go to the common stock would be fair, which, considering that -- let me just say one thing, that prior to -- well, there were 3,555,000 shares of common stock outstanding, which if you then, to simplify the capitalization, to have a reverse split of one for ten, became 355,000.

Well, if that was going to be ten percent of what the capitalization was going to be, the total capital then was going to be a little bit more than three and a half million shares.

And the first thing that I looked at after that point was to take the bonds and try to be as fair as possible to the bonds. The plan that I structured, I had to envision it as being done prior to the effective date of the thing, and to be fair to the bond holders, I wanted to get them at least in the plan as I put together, a thousand dollars per bond, which was what their claim was, because they are obviously the senior security of the whole company.

And I looked at the price history of the common. For

a long time it had sold in the dollar range, generally above, maybe, you know, sporadically below, but generally above. So I figured a dollar would be a good place to start to do that, and on the basis of trying to get a thousand dollars for that on the bonds, and then adding some, just to make sure that I wasn't being unfair, a dollar a share would come out to a thousand shares per thousand dollar bond on the reverse split stock. So I said, let's give them fifteen hundred shares per thousand dollar bond just to make sure that I wasn't being unfair.

On that basis, I came up with the fact that out of my capitalization, there remained for division amongst two preferred issues 2 million 230-some-odd thousand shares.

At that point, I went into preferreds, and as I mentioned earlier, the relevant measure of the two preferreds in my opinion is not the market value of the two preferreds but their claim in liquidation, which is essentially pro-rata. So that I multiplied then the number of shares of the preferred, which for the three dollar was 334-thousand some-odd shares times the liquidation value, which came to 21.7 million. And I did the same thing against the $25.00 liquidation value for the $1.60 preferred, which came to a little less than six million dollars. And the proportionate share then became 78 percent, roughly, for the $4.00 preferred,

and 21 percent or 22 percent for the $1.60 preferred.

On that basis, each of the $4.00 preferred was entitled to 5.23 shares in the recapitalization, and the $1.60 preferred would be entitled to 2.01 shares in the recapitalization. And then you came down to the price on the day prior to the shareholder vote, which is the September 13 vote, you came to a sixteen dollar and change figure for the $4.00 preferred, which, against the 12,560 shares, comes to 205 some-odd thousand dollars.

MR. CASH: Your Honor, may the record now reflect, in view of our prior considerable conversations and discussions we have had with respect to this matter, defendant's objection to the question and to the answer which has just been elicited.

THE COURT: Yes. I will overrule your objection. However, I had indicated my view in the matter, and I told your adversary that I would take the line of proof so that he can have a complete record. I will give it what weight it may be entitled to, but the difficulty with it is that he assumes creating a plan of reorganization. It may be a very fine plan, but I don't think it is competent to rely on.

Q Mr. Anreder --

THE COURT: What figure did you get to for the value of our particular issue here?

A $16.34.

Q Mr. Anreder, is the common stock of Curtis Publishing currently being traded?

A Yes, it is.

Q What is it being traded at at present?

MR. CASH: Objection, your Honor.

THE COURT: New common you are talking about?

MR. FUCHS: That is correct.

THE COURT: I don't see the relevancy.

MR. FUCHS: If there should be a question, your Honor, of damages --

THE COURT: Don't you have some tables of prices here that you can show the Court, that the Court could judicially notice?

MR. FUCHS: Will the Court, if need be, take judicial notice of what the common stock is selling at today on the Philadelphia Exchange?

MR. CASH: Your Honor, I cannot see the relevancy of that.

THE COURT: I can't either.

MR. FUCHS: If it should become relevant in view of the briefs?

THE COURT: If it becomes relevant by any stretch, I will take judicial notice of it, if you gentlemen will

furnish me the pink sheets or whatever you are relying on.

MR. FUCHS: Thank you. In that case, your Honor, I have no further questions of this witness.

THE COURT: You may cross examine.

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CROSS EXAMINATION

BY MR. CASH:

Q Mr. Anreder, have you ever had any experience in publications, in the publishing field?

MR. FUCHS: I object to the question are being irrelevant.

THE COURT: Overruled. He can answer it yes or no.

A I haven't had -- I don't know what you mean, "in the publishing field". In terms of analyzing publishing shares?

A No. Have you ever been employed by a publishing firm?

A No.

Q Have you ever been involved in making a survey with respect to the sales of publications, not with the stock of the company, but with the sale of the publications?

A No.

Q Do you have any knowledge on how volumes of sub-

scriptions are determined for publications?

A No.

Q Mr. Anreder, in your direct testimony you had referred to some documents that had figures on them with respect to transactions of the Curtis stock, did you not?

A Yes, sir.

Q May I see them?

A Certainly (handing).

Q May I also see the other documents that you were referring to during the course of your examination?

A (Handing.) These I did not refer to, but if you want them, you can have them.

This is the other thing I referred to.

Q That I have.

THE COURT: For the records, will you give the numbers of the papers?

MR. CASH: Yes. The witness has handed to counsel Plaintiffs' Exhibit 9 for identification and Exhibit 10 for identification.

Q Mr. Anreder, on Defendant's Exhibit 10 for identification, where did you obtain the information in order to make this schedule out?

A Well, the figuring was mine, but prices were taken from the company's exchange offer to the bondholders, from

the tables in the exchange offer to the bondholders.

Q You are referring to the items that have already been put into evidence, are you not?

A Yes.

THE COURT: Exhibit 7?

A I don't know which one.

THE COURT: This paper, Exhibit 7?

A Yes, sir.

Q Am I to understand that Plaintiffs' Exhibit 9, that the figures therein contained also come from the same information?

A To the extent that he -- yes, the statistical, yes.

Q Did there ever come a time when you examined the records -- withdrawn.

This stock, was it not at that time being traded on the Philadelphia-Washington-Baltimore Exchange, was it not?

A Yes.

THE COURT: This stock being what?

MR. CASH: The Curtis stock.

THE COURT: Common?

MR. CASH: The common and the preferred.

A Yes.

Q And I am referring to the $4.00 preferred.

Did there ever come an occasion in your analysis that you examined the records of the Exchange to determine the prices on a day-by-day basis?

A No, I did not.

Q Are you aware of the volume of the trade of the preferred and the common on the 13th of September, '72?

A Well, I have a document -- no, I do not, no. I don't.

Q Have you in any way examined the volume of trade with respect to the preferred and the common for the five or six months prior to the election date, which was September 13, '72?

A No, I do not.

THE COURT: When was this proposal first publicly announced?

MR. CASH: I think it is July of that year, your Honor. The exact date I don't know.

July 27.

Q Mr. Anreder, would there be any significance in knowing the amount of the trades in preferred as it related to common on particular days with respect to the theory that you had advanced in your testimony, that there was a relationship between the preferred and the common?

A I am sorry, I did not understand the question.

Q Would it be necessary to know how many trades were made of the preferred on a particular date in ratio to how many trades were made in common, as it concerns the theory that you advanced during your direct examination of determining the value of the preferred by looking at the common?

A Not really, no.

Q In your estimation, there wouldn't be any significance as to determining the number of trades in the volume of the preferred in any one particular day prior to September 13; is that your testimony?

A I mean it wouldn't be an overriding consideration. It might have some value.

Q Would there be some significance as between the relationship of the trades on that day?

A I am sorry. I did not get that last question.

Q Would there be any significance at all to the ratio of the trade between the preferred, the $4.00 preferred, and the common on any particular date with respect to the theory you advance on the value being pegged to the common stock and not necessarily to the preferred?

A Well, which theory are you referring to?

Q Well, you had discussed earlier in your testimony this concept that you were evaluating the preferred based upon what you knew to be the history of the common.

MR. FUCHS: I object to the question as being entirely misleading.

THE COURT: I don't really know that it is misleading, but I think perhaps you might reframe it --

A I really don't understand it.

THE COURT: -- to obtain the answer that you are seeking.

MR. CASH: Let me proceed on a different line, your Honor.

Q In your determination of the market value of the preferred stock, did you take into consideration whether the market was in a position to absorb the 12,560 shares if sold on September 13?

A No, I did not.

Q In your estimation would the quantity of the stock have had any significance as to the price which you could obtain for it if you were to have sold all the stock in that one day?

A If I had to sell that stock on one day, it would have had an effect on the market, yes.

Q And in your estimation, what would the effect have been had you had to sell the twelve thousand?

A I don't know. I didn't check at all the depth of the market at the time.

Q Could the market on that day have absorbed twelve thousand shares?

A I don't know.

Q Therefore, I take it that you did not take this aspect into consideration in arriving at your valuation.

A No, I did not.

Q Did you take into consideration in any manner the number of shares that would have been required to have been absorbed into the market to determine the price?

A No, I didn't.

Q In your estimation, Mr. Anreder, and from your knowledge, could the market have absorbed twelve thousand shares?

A I thought I had just answered that, that I did not know.

Q Do you know whether it could have absorbed any lesser amount?

A I don't know. I didn't check the volume.

Q Have you made any study of the history of the market in the six or so months prior to the effective date?

A In terms of volume?

Q In terms of volume and price.

A Price I looked at. I looked at the prices presented in the materials submitted by the company.

Q But not necessarily the price on the exchange?

A Well, that was the price, I assume, on the exchange.

Q But that was only on that particular date, was it not?

A No, it was for a three-months period. The highest and lowest for three months.

MR. CASH: I have no further questions, your Honor.

MR. FUCHS: I have a few redirect.

THE COURT: Any redirect?

MR. FUCHS: Yes, your Honor.

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REDIRECT EXAMINATION

BY MR. FUCHS:

Q Mr. Anreder, in your opinion, is the fair value of a security based upon what its value would be to a forced seller?

MR. CASH: I object to that.

THE COURT: Sustained.

Q Mr. Anreder, in considering the fair value of securities of the $4.00 preferred securities, in reaching the conclusions that you previously testified to, what type of conditions did you feel were appropriate to place upon any transactions that would be involved in such a consider-

ation?

MR. CASH: Your Honor, I object. The witness has already testified to what considerations.

THE COURT: I think it may be improper cross examination.

MR. FUCHS: Cross or recross?

THE COURT: Improper redirect is what I meant to say.

MR. FUCHS: I will agree it would be improper cross.

THE COURT: It is improper redirect, because the question wasn't gone into on cross examination, and it may be repetitious of the prior testimony.

MR. FUCHS: Your Honor, if I may, the witness has testified under cross examination that he did not consider a forced sale situation, and I am asking him now in his --

MR. CASH: I objected to that.

THE COURT: Yes, I sustained the objection to any testimony about a forced sale. It is argumentative and it calls for a legal conclusion. The question of a forced sale is not involved in this case.

MR. FUCHS: Wasn't there testimony as to whether or not the market could absorb --

THE COURT: Please finish your redirect examination.

MR. FUCHS: I have no further redirect.

THE COURT: You see, there may have been questions about it, but there was no testimony about it because the witness said he didn't know.

MR. FUCHS: All right.

THE COURT: You may step down.

(Witness excused.)

THE COURT: You may proceed, Mr. Fuchs.

MR. FUCHS: The plaintiffs have no further testimony, your Honor.

THE COURT: The plaintiffs rest?

MR. FUCHS: Plaintiffs rest.

THE COURT: You may go forward, Mr. Cash.

MR. CASH: Your Honor, would it be appropriate at this time to make a motion?

THE COURT: You may make a motion, if you wish. I would be inclined to reserve on any motion.

MR. CASH: I will then be very brief about it, without going into it. I do make a motion to dismiss.

The first cause of action dealing with the 10b, there is absolutely no proof with respect to that matter that has been delivered to the Court in any way.

As to the second cause of action dealing with the proper execution under the appraisal laws of the State of

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Pennsylvania, I submit that there has been no proof adduced that said had been complied with, in view of the fact that there is evidence that there had been a vote for the plan; and that subsequent to that, a letter was mailed, which is in evidence. And the question now exists as to whether that letter in itself, the way it is executed and the way it is signed, and being in the first person, and having a signature which really cannot be read except for the fact that the witness himself says, "This is my signature," over the name Oscar Gruss, was in fact and as a matter of law proper execution under the laws of the State of Pennsylvania.

The second question that arises out of that is whether the letter in itself and the alleged proxy that voted against was sufficient revocation notice under the laws of Pennsylvania to revoke the former vote for the plan.

THE COURT: What is the law of Pennsylvania in that regard? Is it different than in New York?

MR. CASH: It is phrased substantially different, your Honor. The law of Pennsylvania is quite distinctly different from New York, which is somewhat more vague. It says, "That the revocation of the proxy shall not be effective unless notice thereof has been given to the secretary of the corporation."

I suggest that if the plaintiff is depending upon

that letter or the alleged proxy to be noticed, I suggest that it does not qualify with the laws of the State of Pennsylvania.

I also submit that, in view of the admission by plaintiff and the placing into evidence of a blank proxy card with the name of Curtis, I submit that there is a good possibility that if a proxy card at one time was placed in that letter, it was not the proxy card dealing with the twelve thousand five hundred some-odd shares. And it was for that reason that, if there was a proxy card received by Curtis, it was a card that could possibly have had the signature of Mr. Gruss on it but didn't designate any other matter on it, so that it could be identified with the particular stock, and therefore most likely was disregarded.

THE COURT: Is there anything in the notice of the meeting about the revocation of a proxy?

MR. CASH: No, your Honor.

MR. FUCHS: Yes, there is, your Honor.

THE COURT: Would you give me the page, please?

MR. FUCHS: In the proxy material there is.

THE COURT: Page.

MR. FUCHS: May I have the exhibit?

THE COURT: All I have is the one that is attached

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MR. FUCHS: I am sorry --

THE COURT: -- attached to the stipulation.

MR. FUCHS: Yes. That is the one I am referring to.

THE COURT: All right. There is a copy of that in evidence, but I don't have it.

MR. FUCHS: Yes. If you will give me a second, please, I will find it.

THE COURT: Did I interrupt you, Mr. Cash?

MR. CASH: That is all right. You had been asking about this question of revocation.

The statutes which are outlined in the proxy material I do not believe cover that particular section of the revocation. It only dealt with the rights of appraisal.

MR. FUCHS: If I may, on page eight of the exhibit, the first or second paragraph states how a proxy may be revoked. I might say it is inaccurate in that it says that written notice is required where the statute just required notice.

MR. CASH: Sorry, I thought you were referring to a statute.

THE COURT: That injects a new problem in the case, doesn't it? The record is a little bit unclear about this Exhibit A, as I have told you before. I interpret

Exhibit A to be dated August 22, 1972.

MR. FUCHS: Your Honor, we have stipulated that it was obtained by Curtis in August of 1972.

THE COURT: It shows a receipt stamp by Curtis on September 13.

MR. FUCHS: Your Honor, as I said, we have stipulated that it was obtained on August 22. We did that for the reason that in the testimony of the witness Margaret Wilkinson she states that this is the stamp of their bank that did the tallying.

THE COURT: I see.

MR. FUCHS: And so,as the one that received it might be irrelevant, we stipulated as to the date of receipt.

THE COURT: The meeting was when?

MR. FUCHS: September 14, your Honor.

THE COURT: There is no evidence of when the September 12 letter was received by Curtis, is there?

MR. FUCHS: Yes, there is, your Honor. We have also stipulated that that was received on September 13 by Margaret Wilkinson, then the secretary of the company.

THE COURT: Before the meeting.

MR. FUCHS: That is correct.

THE COURT: She was the secretary of the company?

MR. FUCHS: We have stipulated that she was then

the secretary of the company.

MR. CASH: Yes, your Honor.

MR. FUCHS: And vice president.

THE COURT: All right. Decision is reserved.

MR. CASH: I must point out there has been no rebuttal as to the authenticity of the positive vote for the recapitalization, and furthermore, it has already been stipulated that that proxy was in fact voted for; that had we brought up the judges to testify, there would have been testimony to the effect that it had been voted for. There are no votes against, as a matter of fact, your Honor, totalling twelve thousand shares.

THE COURT: I understand that. I will reserve decision on the motion. You may go forward with your expert.

Would you like a short recess? Ten minute recess.

(Recess.)

MR. CASH: The defendant would like to call as its first witness, Fred Shinagel.

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F R E D S H I N A G E L, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CASH:

Q Mr. Shinagel, are you presently engaged in the

securities industry?

A I am an independent consultant in the field.

Q Will you describe to the Court your background, both in education and in the securities field.

A Right. I am a graduate engineer and took a Master's Degree at the Sloane School of M.I.T., which is their business school.

Then I spent six years in industry as a financial analyst, W. R. Grace & Co., and after that I spent ten years with Lazard Freres, who are an investment banking firm in New York City. Half that time I spent in research and was director of research, and the other half I spent in ~~export~~ finance and was a vice president of the firm.

I then went into business for myself and spent four years in a partnership with someone, which has since been terminated, and I am now an independent consultant in the field of investments, finance, long-range planning, mergers and acquisitions -- generally, the investment banking business.

Q Are you a member of any professional organizations?

A Yes. I am a member of the New York Society of Security Analysts and the American Finance Association.

Q Are you in any way connected with the defendant, Curtis Publishing, or any of its magazines?

A Not at all.

Q Have you ever been employed by them?

A Never, until this case.

MR. CASH: Your Honor, if counsel would like to voir dire the witness --

THE COURT: Yes, do you want to have any examination on the voir dire?

MR. FUCHS: Just a few brief questions, your Honor.

VOIR DIRE EXAMINATION

BY MR. FUCHS:

Q Mr. Shinagel, you said that you were a graduate engineer, and then you received a Master's. What degree did you get a Master's in, sir?

A Master's in Science and Industrial Management. That is the terminology.

Q It was not in any field related to the securities business, is that correct?

A Well, I specialize in finance. The program at M.I.T. is a business administration program geared to an undergraduate engineering degree. In that program you can specialize in marketing, production, finance, that type of thing. And my emphasis was finance.

Q Did the program leading to the Master's involve

any work in engineering?

A No.

MR. FUCHS: I have no further questions on the voir dire, your Honor.

THE COURT: You may continue, Mr. Cash.

DIRECT EXAMINATION CONTINUED

BY MR. CASH:

Q Mr. Shinagel, as a preparation of your being asked to render an opinion as to the value of the $4.00 preferred stock of Curtis on September 13, 1972, did you have the occasion to examine any documents?

A Yes. I examined the notice of proxy statement to the shareholders and the exchange offer for the Curtis debenture holders. I looked at the annual report, I recall.

Q And did you have any occasion to examine any of the records of the Philadelphia-Baltimore-Washington Stock Exchange?

A Yes. I examined the trading record for the Curtis common stock and the preferred stock for the year 1972, January through December, and the trading record presents the high, low, and close as well as the volume on each day that any of the securities were traded.

Q Would you now describe to the Court what factors that you took into consideration in determining a value of

the $4.00 preferred stock?

A May I have the proxy statement?

Q Sorry.

THE COURT: If you can answer the question from memory, you should do so.

A Well, it would help me to refer.

THE COURT: All right. He just asked you what factors you took into consideration.

A Right. I appraised the preferred stock from two points of view: one, financial, and the other based on its market value.

Q Would you describe first to the Court the factors involved and where you obtained the information on the question of financial value of the stock.

A Right. The principal elements in my financial analysis came from the notice -- from the proxy statement. And I went through it quite thoroughly and came away with an overall conclusion that this company was on the verge of insolvency.

The board itself -- and I think the proxy is a statement of the board -- described the situation at Curtis in very threatening terms, and I can enumerate some of those.

Q Yes, will you please enumerate for the Court what statements in the proxy material which is in evidence, which

you took to indicate this -- to arrive at this conclusion.

THE COURT: That his company was on the verge of insolvency.

MR. CASH: That is correct.

A Right, right. All the company's cash is required for working capital and its operations will not support the present huge interest and dividend burdens. Unless the company can be recapitalized promptly, an all common stock basis, management knows of no alternative to a liquidation of the company in which the holders of the debentures, which are subordinated to general creditors on liquidation, would receive very little, if anything; and the holders of the prior preferred and common stock would receive nothing.

This was a statement in the proxy statement.

Q In addition to that?

A I then tested the proxy material for relevancy to such a strong statement, and I found that the company had had no earnings for ten years except for one; that it was in need of capital. Its working capital current ratio was one to one, which means that its current assets virtually equalled its current liabilities. Its book value was negative to the tune of thirteen million dollars.

The company had undergone a liquidation of assets program for a preceding period of years to sort of relieve

itself of its debt burdens and in a way to partially liquidate itself. The company was without an effective organization. It was being managed by a Mr. SerVaas, who really was doing it on a management contract basis for the company, and it was very hard to find hope or future prospects in it.

I should also note that the accountants had indicated in their certificate that they really refused to render an opinion. And, as they say, the future of the company as an operating entity is dependent upon the success of future operations. And future operations for the company itself were not evident. The only future operations that could be assumed were those that Mr. SerVaas would bring to the company.

The company has significant litigation and claims pending in other contingencies, which could further impede the weak financial structure that existed.

From my point of view and my experience, this was a company that was virtually dead, and the board tried to save it through a recapitalization program, hopefully to get all the debt to convert to equity, although there was no assurance that that would take place, and all the preferred to convert to common.

I would like to correct when I said debt to equity.

I meant to common.

THE COURT: Is there a difference?

A Equity could be preferred also.

Q Mr. Shinagel, did you also examine the dividend history of the preferred and also the arrearage history of the interest on the bonds?

A Yes.

Q What did you find and what significance did you draw from that?

A The preferred, as we had learned earlier, had an arrearage of thirty dollars a share. This is the $4 preferred. But before that arrearage could be cured the income debentures had interest arrearage of approximately one-third the principal amount, which means a hundred-dollar bond would have an arrearage of approximately thirty dollars.

And, as indicated in the prospectus, the income debentures which had a principal value of $7.5 million, and interest arrearages of $2.5 million, which is ten million dollars, they would have to be cured fully before the preferred could be dealt with at all.

And in the light of a thirteen-million-dollar deficit book value, a nonoptimistic cash flow forecast, my view about the value for this company is very pessimistic.

THE COURT: Is this a deficit book value for

preferred, the $4.00 preferred?

A Well, it's for the whole equity.

THE COURT: In the event of a liquidation, what would the rights of the $4.00 preferred be?

A They would follow after debentures. And as the prospectus states -- I think I have indicated earlier -- "Management knows of no alternative to a liquidation of the company, in which the holders of the debentures would receive very little, if anything, and the holders of the preferred would receive nothing." And this is a statement of management.

I might mention that since this matter of the Texas Gulf Timmins property was raised, that I was aware of it, it was mentioned in the prospectus, but it was mentioned in really such an innocuous way, that related to the problems described earlier, if it were significant I thought it would have been developed in a more significant way.

Q On that same question, Mr. Shinagel, did you ever look into that matter as part of your investigation?

A Yes, I made an inquiry about it, and had learned that this year it was sold for a million dollars.

THE COURT: In 1974?

A Right.

MR. FUCHS: I object to that question, and I ask

that it be stricken. I could not have objected prior to the answer because I didn't know that he was going to say that it was sold. He was asked if any further inquiry.

I ask that it be stricken as hearsay and not relevant to his opinion and also, as well, after the fact.

THE COURT: It is quite a bit after the fact. However, I have taken --

MR. CASH: Your Honor, it might be well after the fact, but I didn't raise it originally. Counsel for plaintiff raised it as being --

THE COURT: That doesn't necessarily make it relevant, does it, who raised it?

MR. CASH: No, but I am saying what's good for the goose is fairly good for the gander, if he is going to raise a subsequent valuation --

THE COURT: I will allow the answer to stand.

Was it shown to whom it was sold?

Was it sold to someone other than an arm's-length sale?

A I did not inquire further.

There are two other elements that I considered, which can influence the speculative value of a security. One is the tax loss carry-forward, which sometimes is the basis for rebuilding a business. In this case, it was a

sizable significant sum of forty million dollars. And the other aspect is the litigation that the company has, which is sort of a plague that a company carries with it which influences whether it is a viable company. In this case, there were ten unsettled litigations, and it has been my experience that no one wants to buy a lawsuit. And the carrot of the possible forty million dollars of tax loss carry-forward becomes very much diminished by the unsettled claims.

Q Based upon this evaluation of the finances, did you come to a conclusion as to the valuation of the stock just from this particular point of view?

A I did.

Q What is your valuation, just from the point of view of the finances of the company?

A Right. I felt that the company was a totally speculative medium that had a total market value of one to two million dollars. I placed the range, because there is an uncertainty whether as a result of this recapitalization the balance sheet would be clean, that is, free of long-term debt or not, since the proxy material provides a provision that the recapitalization plan could go through if only three-quarters of the bonds convert, meaning that you would still have one-quarter of the bonds and --

THE COURT: You understand you are being asked

this question with respect to the 13th of September.

A That is correct.

THE COURT: So you can't postulate any such conversion. I have to make the same ruling in your case as I did in that of the other expert.

What was the company worth as it stood on September 13th, in your judgment, if you know?

A Without the conversion, then, it was worth one million dollars.

Q And could you describe to the Court how you arrived at that and what factors you took into consideration?

A In my view, one million dollars is simply the speculative value of Mr. SerVaas, who got a third equity interest in the company, and therefore has enough motivation to try to rebuild it and become the key entrepreneur in this.

THE COURT: The woods are full of key entrepreneurs, aren't they? Aren't there as many of them as there are mines in Canada?

A I think that is the carrot, but Mr. SerVaas was hooked on to this, and he had said for a third interest he would do it.

THE COURT: So would you, wouldn't you?

A I would, yes. But he had other things to protect.

Q So strictly on a financial basis, without looking

yet into the market value of the stock, what would the $4.00 preferred stock have been valued at on September 13?

A Well, then taking the one million dollars, I relate that to the total common shares outstanding -- well, your Honor, I based my calculation on a lower number of shares outstanding than would have been outstanding if it --

THE COURT: If I understand you --

A If the recapitalization plan had been --

THE COURT: If I understand you correctly, if all of these owners had put all of their rights in a package, including their arrangements with Mr. SerVaas, whatever they might be --

A Right.

THE COURT: -- to become successors in interest of both the common and preferred.

A Right.

THE COURT: If that is so, it is a simple question of mathematics, isn't it?

MR. CASH: In that respect, your Honor, it is.

A Right.

THE COURT: You don't know, I am asking the witness. I am not suggesting the answer.

A Well, I have based -- you see, the plan itself -- without the plan, the company is dead. That is how I read

it. They say, "We have to liquidate," and the preferred owners would have nothing and the common shareholders would have nothing, and we then sort of back to the debenture holders. But the attempt was to preserve the structure, because the structure gives you shareholders and conceivably opportunities to use the tax loss and rebuild.

So the question, then, is: On what number of common shares, what capitalization relates to the million dollars? And I chose to use the number of shares that would be outstanding, assuming a successful recap. Since the recap itself reflects arm's-length negotiations between bond holders, between --

MR. FUCHS: Your Honor, I object to this colloquy. There is no question he is answering at this point.

THE COURT: I am trying to find out what he did, but I think any valuation which was based on the recapitalization plan is subject to the same objection which I sustained with respect to the other expert's appraisal.

MR. FUCHS: Your Honor, if I might, I would have a further objection to that. At least, the other expert's appraisal was based upon a recapitalization that he utilized as a tool whereby he tried to arrive at fair value.

THE COURT: Let's not have a speech.

MR. FUCHS: At least independent value. The